76-507

Supreme Court, U. S.
FILED
OCT 12 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1976

No.

MARGUERITE LEIPZIG, MAYOR OF THE CITY OF REDWOOD CITY, CALIFORNIA, and CHARLES GYSELBRECHT, BUILDING OFFICIAL OF THE CITY OF REDWOOD CITY, CALIFORNIA,
Petitioners,

VS.

ALAN L. BALDWIN and GEORGE Q. CANNON, JR.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

DAVID E. SCHRICKER,
City Attorney,
Suite 510,
702 Marshall Street, Suite 510,
Redwood City, California 94063,
Telephone: (415) 369-6251,
Attorney for Petitioners.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

	Page
Opinion below	2
Jurisdiction	2
Questions presented	2
Constitutional, Statutory and Ordinance Provisions involved	3
Statement of the case	4
Reasons for granting the writ	8
Conclusion	13

Table of Authorities Cited

Cases	Pages
Adderly v. Florida [1966], 385 U.S. 39	9
Cameron v. Johnson [1968], 390 U.S. 611	8
Cantwell v. Connecticut [1940], 310 U.S. 296	8
Cohen v. Calif. [1971], 403 U.S. 15	12
Cox v. Louisiana [1965], 379 U.S. 536	8, 9
Cox v. New Hampshire [1941], 312 U.S. 569	9
Erznoznik v. City of Jacksonville [1975], 422 U.S. 205	9, 12
Farrell v. Township of Teaneck [1974], 126 N.J. Super. 460, 315 A. 2d 424	10
Gibbons v. O'Reilly, 44 Misc. 2d 353, 253 N.Y.S. 2d 731 [Sup. Ct. 1964]	10
Golden v. Zwickler [1969], 394 U.S. 103	2
Hymes v. Mayor of Oradell [1976], ____ U.S. ____, 96 S. Ct. 1755, 48 L. Ed. 2d 243	11, 13
Indianapolis Schl. Commrs. v. Jacobs [1975], 420 U.S. 128	2
Karp v. Becken, 477 Fed. 2d 171 [9th Cir. 1973]	10
Kovacs v. Cooper [1949], 336 U.S. 77	8, 11, 12
Lehman v. City of Shaker Heights [1974], 419 U.S. 298	13
Lloyd Corp. v. Tanner [1972], 407 U.S. 551	11

	Pages
Pace v. Village of Walton Hills [1968], 15 Ohio St. 2d 51, 238 N.E. 2d 543	10
Pell v. Procunier [1974], 417 U.S. 817	11
Peltz v. City of South Euclid [1967], 11 Ohio St. 2d 128, 228 N.E.2d 320	10
Poulos v. State [1953], 345 U.S. 395	8
Ross v. Goshi, 351 Fed. Supp. 949 [D. Hawaii, 1972]	10
Rowan v. U.S. Post Office [1970], 397 U.S. 728	13
Schneider v. New Jersey [1939], 308 U.S. 147	13
Town of Huntington v. Estate of Schwartz, 63 Misc. 2d 836, 313 N.Y.S. 2d 918 [Dist. Ct. 1970]	10
Village of Belle Terre v. Boraas [1974], 416 U.S. 1	9, 12
Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc. [1976], 96 S. Ct. ——, 48 L. Ed. 2d 346	9
Young v. American Mini Theatres, Inc. [1976], —— U.S. ——, 96 S. Ct. 2440, 44 U.S.L.W. 4999	9, 12

Codes

Redwood City Code:	
Section 3.136	4, 5, 6
Section 3.137(b)	4, 5, 8
Section 3.139	4, 5, 8, 9
Section 3.89	4, 5, 7

Constitutions

United States Constitution:	
First Amendment	3, 4, 9, 12
Fourteenth Amendment	4
Fourteenth Amendment, Section 1	3

Statutes

28 U.S.C.:	
Section 1254(1)	2
Section 1343	4
Section 2201	4
Section 2202	4
42 U.S.C.:	
Section 1983	3, 4

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No.

MARGUERITE LEIPZIG, MAYOR OF THE CITY OF REDWOOD CITY, CALIFORNIA, and CHARLES GYSELBRECHT, BUILDING OFFICIAL OF THE CITY OF REDWOOD CITY, CALIFORNIA,
Petitioners,

VS.

ALAN L. BALDWIN and GEORGE Q. CANNON, JR.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

Marguerite Leipzig, Mayor of the City of Redwood City, California, and Charles Gyselbrecht, Building Official of the City of Redwood City, California, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on August 9, 1976.

OPINION BELOW

The opinion of the Court of Appeals (Appendix B, pp. 2-32) is not yet officially reported. No opinion was delivered by the District Court.

JURISDICTION

The judgment of the Court of Appeals was entered on August 9, 1976. A timely petition for rehearing was denied on September 14, 1976 (Appendix A, p. 1). The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether certain provisions of Redwood City's sign regulations, enacted in furtherance of legitimate municipal interests, governing the erection, location and maintenance of temporary signs, are constitutionally valid restrictions permitted under the 1st and 14th Amendments insofar as said regulations apply to political signs.

2. In the event this petition is granted, Petitioners respectfully reserve the right to argue the jurisdictional question of whether the case or controversy herein is moot under the decisions in *Golden v. Zwickler* (1969), 394 U.S. 103, and *Indianapolis Schl. Commrs. v. Jacobs* (1975), 420 U.S. 128, and related or similar decisions.

CONSTITUTIONAL, STATUTORY AND ORDINANCE PROVISIONS INVOLVED

United States Constitution

Amendment I

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Amendment XIV, §1

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTE

42 U.S.C. §1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

ORDINANCE

Redwood City Code §§3.89, 3.136, 3.137(b), and 3.139 (Appendix K, pp. 49-52)

STATEMENT OF THE CASE

Approximately three weeks before the April 9, 1974, general election in Redwood City, California, Respondents, supporters of one of ten candidates for three councilmanic seats, instituted the action below in the United States District Court, Northern District of California, contesting the validity of various provisions of Redwood City's sign ordinance insofar as they pertain to the use of temporary signs used for political advertising. The District Court's jurisdiction was invoked under 28 U.S.C. §1343, 28 U.S.C. §2201, and 28 U.S.C. §2202. The amended complaint alleged deprivation of 1st and 14th Amendment rights and violation of 42 U.S.C. §1983.

On March 20, 1974, the District Court issued a temporary restraining order and order to show cause (Appendix J, pp. 47-48). After hearing, on March 28, 1974, the Court issued a preliminary injunction (Appendix I, pp. 45-46). Appeal was taken from the preliminary injunction, but that appeal was mooted by a subsequent partial judgment and permanent injunction, and that appeal was dismissed (Appendices H, p. 44, G, pp. 42-43, F, pp. 40-41, and E, p. 39).

Respondents' candidate was unsuccessful in his bid for elective political office notwithstanding that the

interlocutory injunctive orders permitted him to campaign virtually unrestricted with political signs. The case proceeded to partial disposition through motions for summary judgment following which a judgment (Appendix G, pp. 42-43), later denominated "partial judgment" (Appendix E, p. 39), and a permanent injunction (Appendix F, pp. 40-41) were issued. Thereafter, on further cross motions for summary judgment, a portion of the remaining issues was decided (Appendix D, pp. 37-38), and after trial on the residual issues final judgment was entered on July 30, 1975 (Appendix C, pp. 33-36). Cross appeals were taken, and on August 9, 1976, the judgment of the Court of Appeals for the Ninth Circuit to which this petition pertains was entered.

The District Court, in sum, held unconstitutional the provisions of the sign ordinance requiring a One Dollar ($1.00) inspection fee (R.C. Code §3.136, 2nd sentence), the aggregate area per candidate/issue limitation (R.C. Code §3.137(b)), and the prohibition upon the use of temporary political signs in residential areas (R.C. Code §3.139) [Appendices G, pp. 42-43; F, pp. 40-41; E, p. 39; D, pp. 37-38; and C, pp. 33-36]. The Court of Appeals, in addition, held unconstitutional the permit and refundable deposit requirements (R.C. Code §3.136), and the summary removal provision (R.C. Code §3.89, last sentence) [Appendix B, p. 32].

The facts adduced in the District Court proceedings show that the City's sign regulations at issue were enacted by the City Council in the 1960's in response

to considerable citizen protest of the large number and character of campaign signs regularly and periodically associated with elections. The Building Official, who enforces the ordinance, testified that the purpose for requiring a permit for each sign (R.C. Code §3.136) is to provide a workable means for him to identify a given sign, first by its location, and then by its owner. Since enforcement of the ordinance is generally carried out in response to complaints of citizens, and since signs, themselves, bear no specific information as to their owner, permits are filed for each sign on the basis of location. The permit form is used for all kinds of signs, but only those portions pertaining to temporary signs are required to be completed by an applicant, and the Building Official and his deputies readily assist applicants and furnish information in filling out the forms. Respondents' only witness at trial of the issue testified that he personally has never filled out the application form.

The Building Official's affidavits and testimony show that the inspection fee of One Dollar ($1.00) is a nominal amount to defray the cost of inspecting signs in his offices, and also for investigation of each site where the signs are erected. The costs to the City for conducting such inspections average Ten Dollars ($10.00) per sign. The Five Dollar ($5.00) per sign "clean-up" deposit (R.C. Code §3.136) is returned to the permittee upon removal of the sign. The average cost per sign incurred by the City for removing signs not properly disposed of by a permittee is Twenty-five Dollars ($25.00).

Affidavits of the former Mayor show that, in conducting legislative hearings prior to enactment of the regulations, the City Council found that the use of temporary signs create traffic hazards, accumulation of debris, and otherwise create dangerous and unsightly conditions and public nuisances. Affidavits of citizens show that political signs are attention-getting devices having an undue distracting influence on motorists who, particularly in residential areas, should be especially alert for children, bicyclists, and pets. Moreover, uncontradicted affidavits show that there is ample exposure to political signs in commercial and industrial areas of the City through which most residents must travel to reach residential areas.

The Building Official's affidavits also show that temporary signs, absent regulation, are generally left unattended, deteriorate and constitute debris and hazards. Summary removal (R.C. Code §3.89) is often the only practical method of protecting the public from abandoned signs before they become hazards. Summarily removed signs are placed in storage. Moreover, prior to removal of such unidentified (as to owner) signs, every effort is made by the Building Official to contact the owner or occupant of the property on which the signs are placed to obtain compliance with the regulations. Further, summary removal is not carried out with respect to enclosed property or buildings without having first obtained permission of the occupant or owner thereof, or having obtained an appropriate order of a Court of competent jurisdiction.

The evidence also showed that alternative forums for political advertising are readily available in the area, including the use of coffee parties, newspaper advertising, a Community College television station, handbills, brochures, and the like. Affidavits of both novice and experienced politicians stated that signs are only one, and not necessarily the most effective, means of political advocacy, and that the regulations (including the aggregate area limitation [R.C. Code §3.137(b)] and residential exclusion [R.C. Code §3.139]) provide ample opportunity for use of signs in Redwood City.[1]

REASONS FOR GRANTING THE WRIT

The question which this case presents is one of first impression involving a matter of substantial and considerable public interest, viz., the manner in which an individual municipality may fashion a solution to the prevalent local problems associated with the use of political sign boards and posters. The issue is not one of prohibition of a particular mode of expression, but the *degree* to which it legitimately may be regulated within the confines of the time, place and manner doctrine (*Poulos v. State* [1953], 345 U.S. 395; *Cantwell v. Connecticut* [1940], 310 U.S. 296; *Kovacs v. Cooper* [1949], 336 U.S. 77; *Cameron v. Johnson* [1968], 390 U.S. 611; *Cox v. Louisiana*

[1]To the extent, if at all, such affidavits were disputed, Petitioners were cut off from trial thereof by the District Court's determination of the issues on summary judgment, and the Court of Appeals' holding that the aggregate area limitation and the residential exclusion are *per se* unconstitutional.

[1965], 379 U.S. 536; *Cox v. New Hampshire* [1941], 312 U.S. 569; *Adderly v. Florida* [1966], 385 U.S. 39).

Moreover, this case involves an element of land use regulation, in that the sign ordinance restricts the use of political signs to certain portions of the municipality (R.C. Code §3.139). Development of land use regulations to soften the ever-increasing abrasiveness of highly urbanized life is of paramount importance to municipal governments throughout the nation as evidenced by recent decisions of this Court (*Village of Belle Terre v. Boraas* [1974], 416 U.S. 1, *Young v. American Mini Theatres, Inc.* [1976], ... U.S. ....., 96 S. Ct. 2440, 44 U.S.L.W. 4999; *Erznoznik v. City of Jacksonville* [1975], 422 U.S. 205). The decision of the Court of Appeals ignores this important element, and instead establishes private residential property as a 1st Amendment forum (Appendix B, p. 27). The implications of that holding are of grave concern to municipal government given the recent determination that *commercial* speech is entitled to 1st Amendment protection (*Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.* [1976], 96 S. Ct. ....., 48 L. Ed. 2d 346).[2]

State and lower Court decisions conflict in certain respects in this important area of regulation. While there appears to be a preponderance of authority

[2]While *Virginia State Bd., etc.*, supra, recognizes the viability of time, place and manner restrictions, the Court of Appeals' decision essentially obliterates it, and municipalities may expect commercial enterprises to capitalize on the holding. Indeed, Respondents' witness admitted that a sign company contributed to the cost of this lawsuit.

holding unconstitutional absolute prohibition of political signs (*Pace v. Village of Walton Hills* [1968], 15 Ohio St. 2d 51, 238 N.E. 2d 543; *Peltz v. City of South Euclid* [1967], 11 Ohio St. 2d 128, 228 N.E. 2d 320; *Farrell v. Township of Teaneck* [1974], 126 N.J. Super. 460, 315 A. 2d 424; *Ross v. Goshi,* 351 Fed. Supp. 949 [D. Hawaii, 1972], other authority supports exclusion of political signs from residential areas (*Gibbons v. O'Reilly,* 44 Misc. 2d 353, 253 N.Y.S. 2d 731 [Sup. Ct. 1964]; *Town of Huntington v. Estate of Schwartz,* 63 Misc. 2d 836, 313 N.Y.S. 2d 918 [Dist. Ct. 1970]). Moreover, the decisions of the Court of Appeals herein throws doubt upon the validity of almost *any* regulation of political signs when it is noted that, in the same circuit, a district court in an earlier decision upheld restrictions on political signs when such restrictions conform to those placed on outdoor signs generally (*Ross v. Goshi,* supra).

In recognizing, but determining insubstantial, the legitimate public interests furthered by the regulations, the Court of Appeals completely failed to acknowledge the very real distinction between political signs within the purview of the regulations, and readily available modes of communication not so restricted which are far less burdensome upon the municipality. The distinction is crucial, for the conduct regulated by the City's sign ordinances relates to time, place and manner in the use of unattended signs. By broadly characterizing political signs subject to the ordinance as "virtually pure speech,"[3] the

[3]The authority relied upon by the Court involved prohibition of a *hand-held* sign (*Karp v. Becken,* 477 Fed. 2d 171 [9th Cir., 1973]).

Court relegated the public interests to such an inferior position that the regulations fall by definition without analysis (e.g., the "prior conditions" of inspection fee, refundable deposit, and permit are made to appear as restrictions upon vocal utterances of persons, cf., *Hynes v. Mayor of Oradell* [1976], ... U.S. ....., 96 S. Ct. 1755, 48 L. Ed. 2d 243). The burden imposed upon the public by signs detached from the person is substantial. The contested regulations, viewed in the context of facts pertaining to the particular community in which they are effective, and giving due regard to the availability of alternative means of communication (*Lloyd Corp. v. Tanner* [1972], 407 U.S. 551, 567; *Kovacs v. Cooper,* supra), are readily seen as reasonable. Conversely, the interests of a sign owner in the message expressed by unattended signs is of considerably less importance than that involved with hand-held signs, leaflets, or other modes of speech directly associated with the person. The "purity" of the speech becomes diluted by disassociation with the bearer of the message, and the municipality is left with the problem created by the adulterated expressive mode.

The limited exception to the foregoing might occur when such signs are placed on an individual's residential lot. But, in such circumstances, the countervailing right of privacy of the neighbor is so great as not to justify the use of signs in view of readily available less abrasive but equally or more effective alternative means of expression (*Pell v. Procunier* [1974], 417 U.S. 817, 827-828), viz., neighborly personal communication. Placed in proper context, the

City's sign ordinance thus regulates land use, ". . . implicating 1st Amendment concerns only incidentally and to a limited extent." (*Young v. American Mini Theatres, Inc.*, supra, 49 L. Ed. 2d, at 327-328, Mr. Justice Powell concurring; see, also, *Village of Belle Terre v. Boraas,* supra).

The Court of Appeals thus failed to recognize the crucial distinction between the nature of the signs subject to the City's ordinance and modes of communication which the viewer reasonably can avoid (cf., *Erznoznik v. City of Jacksonville,* supra). That error causes conflict with decisions of this Court protecting the right of privacy. Political advertising in commercial and industrial areas (permitted under the ordinance) can be avoided by "averting the eyes" while traversing the area. However, it is in residential areas that political signs most particularly impinge upon the right of privacy of others. In point of fact, one cannot "avert the eyes." Unlike the viewer in *Cohen v. Calif.* [1971], 403 U.S. 15, relied upon by the Court of Appeals, the dweller in residential areas cannot walk away from the offensive visual impingement. He can only avoid the impact of political signs placed on neighboring properties by restricting his personal use of his own property. To avoid such signs, he must retreat to the farthest corner of his own residence, or, at least, draw his curtains or blinds. A suburban resident should no more be required to wear blinders than earmuffs (*Kovacs v. Cooper,* supra). Repetitive or continued invasion of privacy is entitled to the highest degree

of protection (*Rowan v. U.S. Post Office* [1970], 397 U.S. 728). The visual attack of political signs pierces and impinges beyond the outer boundaries of one's domain (id., 397 U.S., at 738). In residential areas, the political advocate who uses signs forcefully intrudes upon the privacy of his neighboring captive audience (*Lehman v. City of Shaker Heights* [1974], 419 U.S. 298, 307, Mr. Justice Douglas concurring).

In failing to make the aforementioned distinctions, the Court of Appeals erroneously analogizes Redwood City's regulations to those prohibiting or unconstitutionally burdening door-to-door solicitation or canvassing (*Schneider v. New Jersey* [1939], 308 U.S. 147; *Hynes v. Mayor of Oradell,* supra). Unless this Court corrects the erroneous application of such authorities, reasonable regulation of time, place and manner of expression with respect to political signs, supported by pertinent authorities (supra, pages 8-9), will be impossible.

CONCLUSION

WHEREFORE, Petitioners respectfully pray that the Petition for Certiorari be granted.

Dated, Redwood City, California,
October 9, 1976.

Respectfully submitted,
DAVID E. SCHRICKER,
City Attorney,
Attorney for Petitioners.

(Appendices Follow)

APPENDICES

Appendix A

United States Court of Appeals
for the Ninth Circuit

Alan L. Baldwin and George Q. Cannon, Jr., Plaintiffs-Appellees, v. Redwood City; Paul C. Keckley, as Mayor of Redwood City; and Charles Gyselbrecht, as Building Official of Redwood City, Defendants-Appellants.	Nos. 75-1412 75-3132
Alan L. Baldwin and George Q. Cannon, Jr., Plaintiffs-Appellants, v. Redwood City; Paul C. Keckley, as Mayor of Redwood City; and Charles Gyselbrecht, as Building Official of Redwood City, Defendants-Appellees.	Nos. 75-3042 75-3529

[Filed Sept. 14, 1976]

ORDER

Before: BROWNING and CHOY, Circuit Judges, and *SKOPIL, District Judge

The petition for rehearing is denied.

*Honorable Otto R. Skopil, Jr., United States District Judge. District of Oregon, sitting by designation.

Appendix B

United States Court of Appeals
for the Ninth Circuit

Alan L. Baldwin and George Q. Cannon, Jr., Plaintiffs-Appellants, vs. Redwood City; Paul C. Keckley, as Mayor of Redwood City; and Charles Gyselbrecht, as Building Official of Redwood City, Defendants-Appellees.	Nos. 75-1412 75-3132
Alan L. Baldwin and George Q. Cannon, Jr., Plaintiffs-Appellees, vs. Redwood City; Paul C. Keckley, as Mayor of Redwood City; and Charles Gyselbrecht, as Building Official of Redwood City, Defendants-Appellants.	Nos. 75-3042 75-3529

[August 9, 1976]

Appeal from the United States District Court
for the Northern District of California

OPINION

Before: BROWNING and CHOY, Circuit Judges,
and SKOPIL,* District Judge

BROWNING, Circuit Judge:

Alan L. Baldwin and George Q. Cannon, Jr., property owners, residents, and registered voters of Redwood City, brought this action for injunctive and declaratory relief challenging certain Redwood City ordinances governing the display of temporary signs, including political campaign signs, as violative of the First Amendment. Baldwin and Cannon filed their complaint less than a month before the April 9, 1974, general election in Redwood City. They stated that Redwood City's temporary sign regulations has prevented them from erecting signs on behalf of a candidate for Redwood City Council, subsequently defeated in the April 1974 election.

Redwood City has adopted a detailed code governing the erection, location, and maintenance of all types of signs within the city. The challenged provisions are found in a division of this code dealing with "temporary signs," which is reproduced in full in the margin.[1] It constitutes a succinct but comprehensive

*Honorable Otto R. Skopil, Jr., United States District Judge, District of Oregon, sitting by designation.

[1]This division of the general ordinance reads in full as follows:

DIVISION 6. TEMPORARY SIGNS

Sec. 3.133. Erection regulated.

Temporary signs may be erected in addition to all other signs permitted by this article without complying with the provisions of subdivision II of division 3 of this article if

regulatory scheme controlling the use of temporary signs.

---

they comply with the provisions of this division. (Ord. No. 1983, art. 8, § 8.1)

Sec. 3.134. Uses.

Temporary signs shall be used solely for the purpose of advertising an event occurring on a specific date, such as elections, theatrical and circus performances and special sales by retail stores. (Ord. No. 1083, art. 8, § 8.2)

Sec. 3.135. Maximum length of time to be maintained.

Temporary signs shall not be maintained for a period in excess of sixty days, and in no event shall such signs be maintained more than ten days after the happening of the event advertised thereon. (Ord. No. 1083, art. 8, § 8.3)

Sec. 3.136. Permit required to erect; application; inspection fee; cash deposit or bond.

No person shall erect or maintain any temporary sign until a permit therefor has been secured from the building inspector. Applications for a temporary sign permit shall be made on forms provided by the building inspector and shall be accompanied by a nonrefundable inspection fee of one dollar for each sign.

Every application for a temporary sign shall be accompanied by a cash deposit of five dollars for each temporary sign proposed to be erected to assure removal of such signs in accordance with the provisions of section 3.135. On the failure to remove the signs as required by section 3.135, the deposit shall be forfeited to the city; otherwise, the building inspector shall cause the deposit to be refunded. In lieu of a cash deposit, the building inspector may accept a bond, executed by a corporate surety authorized to do business in the state and conditioned upon removal of the temporary signs in compliance with the provisions of section 3.135. (Ord. No. 1083, art. 8, § 8.4)

Sec. 3.137. Maximum area.

(a) No temporary sign shall exceed sixteen square feet in area. The aggregate area of all temporary signs placed or maintained on any parcel of real property in one ownership shall not exceed eighty square feet.

(b) The aggregate area of all temporary signs placed or maintained within the city advertising a single event or, in the event of an election, for any candidate or ballot issue, shall not exceed sixty-four square feet. (Ord. No. 1083, art. 8, § 8.5; Ord. No. 1304, § 18)

Sec. 3.138. Placement on public property.

No temporary sign shall be permitted on or to extend over any public property; provided, however, that the building inspector may issue a permit for the erection or maintenance of banners, flags, bunting and similar devices over any public

Temporary signs are exempt from provisions of the general sign ordinance imposing design and structural controls upon signs (section 3.133). Temporary signs may be used only for advertising an event occurring on a specific date "such as elections" (section 3.134). They may be maintained for no more than 60 days, and must be removed within 10 days after the advertised event (section 3.135). A permit must be obtained for each temporary sign. Every application for a permit must be accompanied by a $1.00 nonrefundable inspection fee and a $5.00 refundable deposit to assure removal (section 3.136). No temporary sign may exceed 16 square feet (section 3.137(a)). The aggregate area of such signs on any parcel in one ownership may not exceed 80 square feet (*Id.*). The aggregate area of such signs advertising a single candidate or issue may not exceed 64 square feet (section 3.137(b)). No such sign is permitted on public property (section 3.138). None is permitted in a residential zoned district of the city (section 3.139). The building inspector may after 24 hours' written notice remove any sign erected in violation of the ordinance, and "without notice, remove any temporary sign

---

right of way if he finds that such device is to be maintained in connection with an event of a general civil and public nature conducted within the city. The building inspector may establish conditions on such permit as may be necessary to assure compliance with the purposes of this article. (Ord. No. 1083, art. 8, § 8.6)

Sec. 3.139. Prohibited in residentially zoned districts.

No temporary sign shall be placed or maintained in the zoning districts mentioned in section 3.121. (Ord. No. 1083, art. 8, § 8.7)

which is erected, placed or maintained in violation of this article in any zoning district" (section 3.89).[2]

On cross motions for summary judgment the district court declared unconstitutional the nonrefundable $1.00 inspection fee for each sign, the limitation to 64 square feet of the aggregate area of all signs on behalf of a candidate or ballot proposition, and the ban on placing such signs in residential areas. On subsequent motions for summary judgment the court sustained the requirement of a $5.00 refundable deposit per sign and the provision for summary removal of signs placed in violation of the ordinance. After trial, the court also sustained the requirement that a permit be obtained for each temporary sign, the limitation of the area of each sign to 16 square feet,

[2]Section 3.89 provides:

All signs, including signs installed prior to the adoption of this article, shall be constantly maintained in a state of of security, safety and good repair. If the building inspector finds that any sign is unsafe or insecure, is a menace to the public safety or has been constructed, erected, relocated or altered after the effective date of this article in violation of the provisions hereof, he shall give written notice to the owner or the tenant of the property wherein it is located to remove or alter such sign. If the owner or tenant fails to comply with the provisions of this article within ten days after such notice, the building inspector may cause such sign to be removed, and the cost thereof shall be paid by the owner or tenant. The building inspector may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice.

Notwithstanding the foregoing, the building inspector may remove any sign erected, placed or maintained in violation of this article if the owner of the property on which the sign is erected fails to remove such sign after 24 hours written notice to do so. In addition, the building inspector may summarily, without notice, remove any temporary sign which is erected, placed or maintained in violation of this article in any zoning district. (Ord. No. 1083, art. 3, § 3.5; Ord. No. 1140, § 2; Ord. No. 1304, § 3)

and the limitation of the aggregate area of all signs on a single parcel of property to 80 square feet. Both sides appeal.[3]

I

There are two preliminary matters.

A. On July 8, 1975, the district court entered an order granting a motion for summary judgment upholding certain of the challenged provisions. Issues relating to the constitutionality of other provisions were tried to the court. Final judgment was entered on July 30, 1975. The notice of appeal filed by Baldwin and Cannon states that the appeal is "from the judgment entered in this action on July 30, 1975 . . . ." Redwood City officials argue that Baldwin and Cannon waived their right to appeal the July 8 order because that order was not expressly incorporated in the final judgment, and Baldwin and Cannon did not file a separate notice of appeal within 30 days of the "final" order of July 8 as required by Federal Rule of Appellate Procedure 4(a). We disagree. The order of July 8 denied Baldwin and Cannon's prayer for injunctive relief as to provisions sustained by

[3]The district court dismissed the action as to Redwood City on the ground that a municipal corporation is not a "person" within the meaning of 42 U.S.C. § 1983. Baldwin and Cannon do not challenge this ruling. *See* City of Kenosha v. Bruno, 412 U.S. 507 (1973). Remaining as defendants were Paul C. Keckley and Charles Gyselbrecht, who were sued in their official capacity of Mayor and Building Official of Redwood City, respectively.

Apparently Mr. Keckley is no longer Mayor of Redwood City. Rule 25(d) of the Federal Rules of Civil Procedure provides for automatic substitution of his successor as a party. Substitution is appropriate since it was admitted and the district court found that occupants of the office had enforced and would continue to enforce the temporary sign regulations.

the order. Although the order was interlocutory, it was nevertheless appealable.[4] Baldwin and Cannon lost their right to an interlocutory appeal from the July 8 order because they did not file a notice of appeal within 30 days.[5] But an interlocutory appeal is permissive, not mandatory. When an appeal is not taken, the interlocutory order merges in the final judgment and may be challenged in an appeal from that judgment.[6]

B. The complaint alleged that Baldwin and Cannon were supporters of Melvin Kerwin, candidate for the Redwood City Council in the 1974 election, and were prevented by the challenged ordinance from erecting signs of the size and at the locations they desired in support of Kerwin's candidacy. The election has been held. Kerwin was defeated and, allegedly, will not run again. Redwood City officials argue that the case is moot, relying upon *Golden v. Zwickler,* 394 U.S. 103 (1969). Zwickler challenged a state statute barring distribution of anonymous literature in an election campaign. Not only had the election been held, but Zwickler's opposition was directed solely against a particular congressman, who had since been appointed to a 14-year term as a state

[4]28 U.S.C. § 1292(a)(1). *See* EEOC v. International Longshoremen's Ass'n, 511 F.2d 273, 276 (5th Cir. 1975); Abercrombie & Fitch Co. v. Hunting World, Inc., 461 F.2d 1040, 1041 (2d Cir. 1972).

[5]George v. Victor Talking Mach. Co., 293 U.S. 377, 378-79 (1934); Bowles v. Rice, 152 F.2d 543, 544 (6th Cir. 1946).

[6]Adamian v. Jacobsen, 523 F.2d 929, 931 (9th Cir. 1975); 9 Moore's Federal Practice ¶ 110.18 (1975 ed.).

supreme court justice. It was therefore "most unlikely" that he would be a candidate again. On these facts, the Supreme Court concluded that an "actual controversy" of sufficient "immediacy and reality" to warrant issuance of a declaratory judgment was lacking.

This case is different. Baldwin testified that he was engaged actively in politics in the Redwood City area for nearly 20 years. He has participated, and made use of political signs, in both partisan and nonpartisan elections, including elections for the Redwood City Council and the board of Redwood City high school. He has supported candidates other than Melvin Kerwin— indeed, has been a candidate himself. He testified that there would be future occasions in which he would want to use such political posters in a manner prohibited by the challenged provisions. The district court found that Redwood City officials would continue to enforce the challenged provisions against Cannon or other persons wishing to erect political campaign posters in future municipal elections. Thus, the record established Baldwin's continuing interest in local political campaigns involving the use of such signs and a continuing determination on the part of Redwood City officials to enforce the ordinances. On these facts, a future confrontation is likely; an immediate and real controversy exists. Moreover, given the frequency and brevity of local political campaigns and the length of time required to complete judicial proceedings, the issue is one "capable of repetition, yet evading review." *Southern Pacific Terminal Co. v.*

ICC, 219 U.S. 498, 515 (1911).[7] These appeals are not moot.

II

Before considering the district court's rulings on each of the challenged provisions, we state our understanding of the tests to be applied.

Both the parties and the district court rely upon concepts drawn from cases involving challenges to state and local statutes under the Equal Protection Clause. The Supreme Court has employed a different analysis in evaluating governmental restrictions on free speech. In First Amendment cases involving statutes similar to Redwood City's temporary sign regulations, the Court's approach has been one of balancing rather than classifying.[8] The following general rule may be drawn from decisions in which state and municipal enactments have been weighed against the First Amendment: Incidental restrictions upon the exercise of the First Amendment rights may be imposed in furtherance of a legitimate governmental interest if that interest is unrelated to suppression of expression and is substantial in relation to the

[7]*See* Storer v. Brown, 415 U.S. 724, 737 n.8 (1974), and cases there cited; Webster v. Mesa, 521 F.2d 442, 443 (9th Cir. 1975). The "capable of repetition, yet evading review" doctrine provides an independent ground for holding this case not to be moot. Thus, even though most of the evidence of a continuing interest in Redwood City politics was provided by Baldwin, we will decide the issues raised by both plaintiffs. *See* Rosario v. Rockefeller, 410 U.S. 752, 756 n.5 (1973).

[8]For recent examples of explicit use of a First Amendment balancing test by the Supreme Court, *see* Erznoznik v. Jacksonville, 422 U.S. 205, 208 (1976); Bigelow v. Virginia, 421 U.S. 809, 826 (1975); Pell v. Procunier, 417 U.S. 817, 824 (1974).

restrictions imposed, and if the restrictions are no greater than necessary or essential to the protection of the governmental interests.[9]

Significant First Amendment interests are involved in this case. Communication by signs and posters is virtually pure speech.[10] The element of conduct in a sign posted on behalf of an issue or candidate during a campaign is minimal. Baldwin and Cannon seek to use posters in political campaigning, and "the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy,* 401 U.S. 265, 272 (1971).[11] Posters and signs are erected adjacent to "traditional first amendment forums, such as public sidewalks and other thoroughfares," *Aiona v. Pai,* 516 F.2d 892, 893 (9th Cir. 1975),[12] where "expressive activity may be restricted only for weighty reasons." *Grayned v. City of Rockford,* 408

[9]*See* Young v. American Mini Theatres, Inc., 96 S.Ct. 2440, 2453 (1976) (Powell, J., concurring); Procunier v. Martinez, 416 U.S. 396, 409-15 (1974); United States v. O'Brien, 391 U.S. 367, 377 (1968); Quaker Action Group v. Morton, 516 F.2d 717, 725 (D.C. Cir. 1975).

[10]Karp v. Becken, 477 F.2d 171, 176 (9th Cir. 1973); *See* Ross v. Goshi, 351 F. Supp. 949, 953 (D. Hawaii 1973); Dulaney v. Municipal Court, 11 Cal.3d 77, 83-84, 520 P.2d 1, 5-6, 112 Cal.Rptr. 777, 781-82 (1974). The significance of this fact is that the extent of permissible regulation significantly increases as the mode of expression moves from pure speech to speech combined with conduct. California v. LaRue, 409 U.S. 109, 117 (1973).

[11]*See* Buckley v. Valeo, 96 S.Ct. 612, 632 (1976).

[12]*See* Schneider v. State, 308 U.S. 147, 163 (1939). The government's power to restrict expression is not enhanced by the fact that signs are posted on private rather than public property. *Cf. Stone,* Fora Americana: Speech in Public Places, 1974 Sup. Ct. Rev. 233, 256-58.

U.S. 104, 115 (1972).[13] Redwood City's regulations inhibit the use of political signs in two principal ways: the permit and free requirements make it difficult to post signs[14]; and various other restrictions on their face limit the quantity, size, and placement of signs. The regulations thus directly infringe the First Amendment rights of individuals who want to express political opinion in a traditional First Amendment forum.

The governmental interests relied upon to support the challenged regulations are public safety, order, and cleanliness, aesthetics and the quality of community life; administrative convenience; and equalization

[13]*See* Lloyd Corp. v. Tanner, 407 U.S. 551, 559 (1972); *cf.* Lehman v. City of Shaker Heights, 418 U.S. 298, 302-03 (1974). In *Lehman,* the Court upheld a ban on political advertisements in municipally owned street cars after determining that the city's policies on access to the transit advertising space were not "arbitrary, capricious or invidious." The Court explained its use of this lenient standard of review by stating, "[h]ere, we have no open spaces, no meeting hall, park, street corner, or other public thoroughfare. Instead, the city is engaged in commerce." *Id.* at 303. The Court concluded "[n]o First Amendment forum is here to be found." *Id.* at 304.

[14]Two candidates in a San Mateo Community College District Governing Board election filed uncontradicted affidavits stating that the Redwood City temporary sign regulations had hampered their efforts to mount a vigorous political sign campaign. One stated that an investigation of Redwood City's requirements for political signs led to the conclusion that they are "cumbersome, expensive and inhibiting." The second candidate asserted "that the permit procedure in Redwood City was so difficult, complicated, expensive and restrictive as to virtually prohibit the use of political signs by my supporters in that city." The affidavits submitted by Redwood City officials did not contradict this showing that Redwood City regulations are so burdensome as to prevent extensive use of political signs. They simply asserted that posters erected in commercial districts are seen by most Redwood City residents and that effective alternatives to political posters are available.

of opportunity among political candidates. The latter interest looks to the content of the communication, and thus involves suppression of communication.[15] The remaining interests are unrelated to suppression of free expression, and are legitimate concerns of government. Obviously they vary greatly in importance, both as general objects of government and as justifications for the particular regulations involved here. The relative significance of these interests, and the importance of the challenged regulations to their realization must be considered in determining the validity of the particular regulations. In such a case as this

> the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.

Schneider v. State, 308 U.S. 147, 161 (1939).[16]

Careful consideration must also be given to whether the challenged regulation is either more inclusive or more burdensome than necessary to further legitimate

[15]*Cf.* Buckley v. Valeo, 96 S.Ct. 612, 634 (1976).

[16]After reviewing the relevant cases, one commentator concluded that the Supreme Court uses the most rigorous version of its First Amendment balancing test "for relatively familiar or traditional means of expression, such as pamphlets, pickets, public speeches and rallies . . . ."—a category that includes political posters and signs. Ely, Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis, 88 Harv. L. Rev. 1482, 1488 (1975).

governmental purposes. "[I]n the First Amendment area 'government may regulate . . . only with narrow specificity.'" *Hynes v. Mayor and Council of Borough of Oradell,* 96 S. Ct. 1755, 1760 (1976), *quoting NAACP v. Button,* 371 U.S. 415, 433 (1963). In addition, the regulation must be the least restrictive means available that would accomplish the legislative purpose. "For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty. . . . If the State has open to it a less drastic way of satisfying its legitimate interests, it may not choose a legislative scheme that broadly stifles the exercise of fundamental personal liberties." *Kusper v. Pontikes,* 414 U.S. 51, 58-59 (1973) (citations omitted).[17] "The question in this case is not whether some support for the regulations may be adduced, by reference to evidence in the record and a claim of reasonable inferences or concerns, but is whether the regulations at issue here are 'unnecessarily restrictive for the purpose they were designed to serve.'" *Quaker Action Group v. Morton,* 516 F.2d 717, 723-24 (D.C. Cir. 1975), *quoting Quaker Action Group v. Morton,* 460 F.2d 854, 860 (D.C. Cir. 1971).[18]

The Redwood City officials rely heavily upon decisions sustaining municipal restrictions upon door-to-door canvassing and use of sound trucks. These modes

[17] *See* Procunier v. Martinez, 416 U.S. 396, 413 (1974); United States v. O'Brien, 391 U.S. 367, 377 (1968).

[18] For application of these principles to sign ordinances, see Farrell v. Township of Teaneck, 126 N.J. Super. 460, 315 A.2d 424 (1974); Peltz v. City of South Euclid, 11 Ohio St. 2d 128, 228 N.E.2d 320 (1967).

of expression involve intrusions upon privacy significantly more egregious and difficult to avoid than posters. Decisions sustaining regulation of canvassing and soliciting rest in part upon the importance of protecting "the householder's right-to-be-let-alone." *Hynes v. Mayor and Council of Borough of Oradell, supra,* 96 S. Ct. at 1760. Similar considerations support the validity of regulations prohibiting sound track emitting "loud and raucous noises." "The unwilling listener is not like the passer-by who may be offered a pamphlet in the street but cannot be made to take it. In his home or on the street he is practically helpless to escape this interference with his privacy by loud speakers except through the protection of the municipality." *Kovacs v. Cooper,* 336 U.S. 77, 86-87 (1949).[19] Posters, on the other hand, do not invade the home. They can be avoided simply by not looking. As the Court noted in *Erznoznik v. City of Jacksonville,* 422 U.S. 205 (1975), "[m]uch that we encounter offends our esthetic, if not our political and moral, sensibilities," but "the burden normally falls upon the viewer to 'avoid further bombardment of [his] sensibilities simply by averting [his] eyes." *Id.* at 210-11, *quoting Cohen v. California,* 403 U.S. 15, 21 (1971).

It is true, as the city officials argue, that means other than posters are available for communication between candidates and the community. The existence of such alternatives is not alone enough to justify

[19] For cases striking down regulations of loud speakers, see Saia v. New York, 334 U.S. 558 (1948); Wollam v. City of Palm Springs, 59 Cal.2d 276, 379 P.2d 481, 29 Cal.Rptr. 1 (1963).

any regulation the city may desire to impose upon this means of expression.[20] It is, however, a factor to be considered in striking the appropriate accommodation between free speech and legitimate governmental interests.[21] Its significance depends upon the nature of the First Amendment interest involved in the particular case, the purpose and the extent of the restriction imposed, and the availability of less restrictive means of accomplishing the legitimate governmental objective. As we have said, the First Amendment interests involved in the display of political posters adjacent to public thoroughfares are substantial. Moreover, means of political communication are not entirely fungible; political posters have unique advantages. Their use may be localized to a degree that radio and newspaper advertising may not. With exception of handbills, they are the least expensive means by which a candidate may achieve name recognition among voters in a local election.[22]

III

Baldwin and Cannon have not attacked the entire regulatory scheme. We refrain from considering the

---

[20]Quaker Action Group v. Morton, 516 F.2d 717, 733 n.49(a) (D.C. Cir. 1975); *see* Schneider v. State, 308 U.S. 147, 163 (1939).

[21]*See* Buckley v. Valeo, 96 S.Ct. 612, 634 n.17 (1976); Pell v. Procunier, 417 U.S. 817, 824-25 (1974); Bread v. Alexandria, 341 U.S. 622, 631-32 (1951); Kovacs v. Cooper, 336 U.S. 77, 89 (1949); Cox v. New Hampshire, 312 U.S. 569, 575 (1941). *See also* Kleindienst v. Mandel, 408 U.S. 753, 765 (1972).

[22]*Cf.* Kleindienst v. Mandel, 408 U.S. 753, 765 (1972); Martin v. City of Struthers, 319 U.S. 141, 145-47 (1943); Van Nuys Publishing Co. v. City of Thousand Oaks, 5 Cal.3d 817, 823-24, 489 P.2d 809, 813, 97 Cal.Rptr. 777, 781 (1971); Stone, supra note 12, at 256-57.

validity of particular aspects of the scheme not challenged. These include, among others, the restriction of the period during which "temporary signs" may be displayed.

The requirements challenged by Baldwin and Cannon are of three kinds. The first are preconditions to the erection of temporary signs: a permit application must be filled out, a $1.00 inspection fee must be paid, and a $5.00 refundable deposit must be made. The second group includes limitations on the use, placement, and size of political signs: the aggregate area of signs per candidate or ballot issue is limited to 64 square feet, individual signs are limited to 16 square feet, the aggregate area of signs per parcel of property is limited to 80 square feet, and no signs are permitted in residential areas. Finally, Baldwin and Cannon challenge the provision authorizing summary removal of signs placed in violation of the other regulations.

We first consider the limitation on the maximum size of individual signs and upon the aggregate area of signs because the conclusion we reach as to the validity of these provisions affects the validity of others.

We have no difficulty agreeing with the district court that the limitations of individuals signs to a maximum area of 16 square feet and the aggregate area of signs on a single parcel to 80 square feet do not offend the First Amendment.

Neither limitation significantly deters the exercise of First Amendment rights; they are comparable to

the decibel restriction on sound trucks upheld in *Kovacs v. Cooper, supra.* Neither is related in any way to the content of the posters. Their effect upon the quantity of expression is remote. Larger signs may be erected by complying with structural and design requirements applicable to other than temporary signs; and there is nothing in the record to suggest that the numbers of parcels in separate ownership in Redwood City is so limited that the 80 square foot per parcel limit imposes any significant restriction on the total exposure a candidate can obtain. Baldwin himself testified that he used signs slightly smaller than 16 square feet in the Kerwin campaign in 1974 and was satisfied with the size; he also testified that although he had placed more than 80 square feet of signs on a piece of property on occasion, it was improbable that he would want to do so often.

Both limitations contribute to the appearance of the community and further other legitimate municipal interests. "Temporary signs" are not required to meet design and structural requirements. The 16 square feet limitation on such signs is based upon Redwood City's experience with the effects of the elements, particularly the wind, upon unreinforced signs of various sizes. This legitimate interest might be served as well by slightly less restrictive size limitations, but "[s]uch distinctions in degree become significant only when they can be said to amount to differences in kind." *Buckley v. Valeo,* 96 S.Ct. 612, 640 (1976). The city officials justify the aggregate sign area limitation of 80 square feet per lot as reducing accumulation of

debris and minimizing traffic hazard. The relationship of the restriction to these interests is attenuated and the unavailability of less restrictive alternatives questionable, but the burden imposed on free speech by this restriction is so minimal that generous allowance may be made for municipal preferences.

The district court also was clearly correct in holding unconstitutional the limitation of the aggregate area of posters on behalf of a single candidate or issue. Because the restriction is keyed to a particular candidate or issue, it rests upon the message conveyed by the posters. It severely restricts the extent to which supporters of a particular candidate or issue may communicate with the voters through this medium. Only four posters of the modest size of 16 square feet may be posted "for any candidate or ballot issue" in the whole of Redwood City—an area of more than 20 square miles with a population in excess of 55,000. Most important, like the limitations on campaign expenditures held unconstitutional in *Buckley v. Valeo, supra,* Redwood City's limitation on the aggregate area of posters that may be erected in support of any candidate or issue "restrict[s] the quantity of campaign speech by individuals, groups, and candidates," and therefore "limit[s] political expression 'at the core of our electoral process and of the First Amendment freedoms.'" *Id.* at 644. *quoting Williams v. Rhodes,* 393 U.S. 23, 32 (1968). Such a restriction can be upheld only if the "the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations on core First Admendment

rights of political expression." *Buckley v. Valeo, supra,* 96 S.Ct. at 647.[23]

One of the asserted objectives of the aggregate size limitation is to equalize the political opportunities of poorer candidates by limiting the number of posters that may be erected by those who are better financed. "But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . . ." *Id.* at 649.

No substantial privacy interest is involved. To a large extent the intrusion may be avoided at the will of the observer.

Any relationship between the aggregate area of temporary signs and traffic safety is far too imprecise to justify the restriction as a traffic regulation. The availability of less restrictive means is demonstrated by another ordinance specifically prohibiting the erection of signs that may obstruct the vision of drivers or interfere with traffic.[24] City officials suggest that

[23]A dollar ceiling on campaign expenditures restricts the use of virtually all means of communication. Buckley v. Valeo, 96 S.Ct. 612, 634 n.17 (1976). The limitations imposed by Redwood City on temporary signs, on the other hand, do not affect the use of handbills, newspapers, radio, or television. As suggested earlier, however, posters are a unique form of political communication for which, in many situations, there may be no adequate substitute. Moreover, as the Court also noted *id.*, there is a vital difference regulating the manner in which a *mode* of communications is employed (limiting the decibels emitted by a sound truck, for example), and regulating the *extent* of the proper use of a mode of communication.

[24]Section 3.87 of Article II of the Redwood City Code provides: "No sign shall be erected so as to obstruct the vision of vehicular traffic or at any location where it may interfere with, or be confused with, any traffic signal or device."

this provision deals only with obstruction, and that posters may also be distracting. Considering the universe of distractions that face motorists on our city streets, temporary political posters are not sufficiently significant to justify so serious a restriction upon political expression.

Much the same analysis applies to the city's legitimate interest in the cleanliness and good order of its streets. There are alternate means of accomplishing this end that are substantially less restrictive of freedom of expression. Redwood City can and does impose an obligation upon owners or tenants of property to remove or alter unsafe or insecure signs.[25] Redwood City also requires that those who post temporary signs to remove them no later than 10 days after the advertised event. If these measures are not wholly successful, the minimal burden of removing the residual litter is a price of free expression the city must bear.[26]

The remaining interest advanced in support of the limitation to 64 square feet of the aggregate area of posters erected in Redwood City is aesthetics—the preservation of Redwood City as an attractive place to live and work. We do not dispute the importance of this interest.[27] However, temporary signs are used primarily in connection with elections, which occur relatively infrequently, and the city has further di-

[25]*See* note 2.

[26]*Cf.* Schneider v. State, 308 U.S. 147, 162 (1939).

[27]Young v. American Mini Theatres, Inc., 96 S.Ct. 2440, 2452-53 (1976); Village of Belle Terre v. Boraas, 416 U.S. 1, 5-6 (1974); Berman v. Parker, 348 U.S. 26, 33 (1954).

minished the problem by limiting the period during which a temporary sign may be displayed to 60 days and requiring removal 10 days after the election. Moreover, it is not beyond the power of the city to impose design restrictions that would bar the more unsightly posters, without impairing political expression. The margin of offensiveness to the taste of some that cannot be avoided by these less restrictive alternatives already used or available to the city does not justify the virtual ban upon political posters imposed by the 64 square feet limitation.[28]

The invalidity of the 64 square foot limitation affects the burdensomeness, and hence the constitutionality, of the preconditions Redwood City imposes upon erection of temporary signs: filing an application, paying a $1.00 inspection fee, and depositing a $5.00 removal charge, for each sign. Applied to four 16-square-foot signs, the burden of compliance may be inconsequential. Applied to the number of political posters that would normally be used in supporting a candidate or issue in a community the size of Redwood City, the burden is so great as to inhibit the use of this means of communication. Moreover, each of the three requirements, when examined in light of

[28]*Accord* Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972); Peltz v. City of South Euclid, 11 Ohio St.2d 128, 228 N.E.2d 320 (1967). The regulations held invalid in these cases prohibited political signs entirely. Redwood City officials argue that only total prohibition, as distinguished from regulation, of a mode of expression offends the First Amendment. The distinction is artificial. In a sense, "[a]ll regulatory legislation is prohibitory." Bread v. Alexandria, 341 U.S. 622, 631 (1951). The question is whether, on balance, a regulation of either kind unduly restricts First Amendment rights.

its purpose, is unnecessarily burdensome and contains an element of arbitrariness.

A single application form is used for all signs; there is no separate application for temporary signs alone. The form calls for detailed information which appears burdensome to obtain. It is conceded that most of this information is irrelevant to temporary signs.[29] Indeed, city officials testified they do not require that this information be furnished to obtain a permit for a temporary sign, and applicants who appear in person to apply for such signs are so advised. But the form is also mailed to those who call or write; it may be completed and returned by mail; and it is headed "only complete application accepted."[30]

[29]The form states, for example:

> Each application for a Sign Permit must be accompanied with duplicate copies of the following information:
>
> 1. A Plot Plan showing the position of the sign and its relation to structures and other signs on the property.
> 2. Plans and Specifications for the sign and showing the method of attachment or anchorage.
> 3. Stress sheets and calculations prepared by a Civil or Structural Engineer, licensed as such by the State of California, when required.
> 4. . . .

Another portion of the form requires the applicant to provide the fire zone, the lot frontage, the area of existing signs, the area of the proposed sign, the maximum height and width of the sign, the "clearance to grade," the maximum projection beyond the face of the building or the street property line, and the vertical and horizontal clearance from overhead electric lines.

[30]The form requires the applicant to certify that he has obtained the written consent of the owner of the property on which the sign is to be posted. Baldwin and Cannon do not object to the requirement of consent, but argue that the further requirement that the consent be written is unduly burdensome. City officials testified that individuals filing permit applications were required to certify that they had obtained written consent, but were not required to produce the written consents. The written

The city officials offered evidence that the average cost of inspection is $10.00 per sign, including administrative expenses and the salaries of inspectors and office personnel. The cost of inspection must vary greatly depending upon the circumstances. The only aspect of a temporary sign subject to inspection at the outset is its size, which can be verified in a few moments with a tape measure. A $1.00 fee for checking the size of a single poster might be reasonable; but, as the district court held, a $500 fee for inspecting 500 identical political posters would be essentially arbitrary, bearing no relationship to the cost. The absence of apportionment suggests that the fee is not in fact reimbursement for the cost of inspection but an unconstitutional tax upon the exercise of First Amendment rights.[31]

consent requirement imposes a substantial additional burden, particularly where it is desirable to employ a large number of small posters, as is commonly the case in political campaigns. The practice followed by Redwood City of not requiring that the written consents be produced indicates that its interest is adequately served by a statement that the applicant has the property owner's consent. Whatever benefit may accrue to the city from the requirement that the applicant certify that the consent is in written rather than oral form is insufficient to justify the heavy additional burdens imposed on the exercise of First Amendment rights.

[31]Follett v. Town of McCormick, 321 U.S. 573, 575, 576-77 (1944); Murdock v. Pennsylvania, 319 U.S. 105, 113-14 (1943); *cf.* Strasser v. Doorley, 432 F.2d 567, 569 (1st Cir. 1970). *But see* United States Labor Party v. Codd, 527 F.2d 118, 119 (2d Cir. 1975).

The charge sustained in Cox v. Hampshire, 312 U.S. 569, 576-77 (1941), was apportioned.

The fee required to be submitted with an application for a permit for other than a temporary sign varies with the valuation of the sign, including cost of installation. Redwood City § 3.82.

According to city officials, the average cost of removal is $25.00 per sign. But again, a $5.00 removal deposit has no reasonable relationship to the cost of removing a single 50 cent political poster placed by a property owner in his front yard, and the charge is so disproportionately burdensome as to inhibit such an expression of political opinion. The deposit is returned if the sign is removed, but money is most useful during a campaign. Requiring the commitment for the duration of the campaign of $5.00 in cash, or surety, for each poster erected would, as a practical matter, preclude erection of all but a few large signs. Means less restrictive of free expression must be relied upon to serve the interests of community tidiness and aesthetics.

In some circumstances a city may both require a permit for activity involving free expression without violating the First Amendment[32] and also collect fees that fairly reflect costs incurred by the city in con-

[32]*See, e.g.,* Cox v. New Hampshire, 312 U.S. 569 (1941); Quaker Action Group v. Morton, 516 F.2d 717, 726-27 (D.C. Cir. 1975).

Both *Cox* and *Quaker Action* considered requirements of permits for parades or organized demonstrations. The Court's opinion in *Cox* suggests that the regulatory problems posed by political signs and posters are of a much lower magnitude than those presented by parades and demonstrations. In *Cox,* the Court noted that the state supreme court had

> thought it significant that the statute prescribed "no measures for controlling or suppressing the publication on the highways of facts and opinions, either by speech or by writing"; that communication "by the distribution of literature or by the display of placards and signs" was in no respect regulated by the statute; that the regulation with respect to parades and processions was applicable only "to organized formations of persons using the highways"; and that "the defendants, separately, or collectively in groups not

nection with such activity.[33] We affirm the district court's holding that Redwood City's inspection fees are invalid, and extend this holding to the removal deposit and the permit system because the particular regulations adopted by Redwood City are unnecessarily burdensome and arbitrary in light of the interests such regulations may properly serve.

The district court invalidated the exclusion of temporary signs from residential zones in Redwood City because this provision constitutes a "total prohibition."[34] There is Supreme Court language suggesting that a form of free expression may not be barred entirely from an area in which exercise of the right of free speech has been traditional.[35] In any event,

constituting a parade or procession," were "under no contemplation of the Act."
Cox v. New Hampshire, *supra*, 312 U.S. at 575. The Court also observed that the New Hampshire Supreme Court had noted that requiring application for a permit gave public authorities the advance notice necessary for proper policing of a parade or demonstration. Further, the state supreme court had observed that by fixing time and place, "the license served 'to prevent confusion by overlapping parades or processions, to secure convenient use of the streets by other travelers, and to minimize the risk of disorder.'" *Id.* at 576. Political signs neither interfere with use of the streets nor create a risk of disorder.

[33]Murdock v. Pennsylvania, 319 U.S. 105, 113-114 (1943); Cox v. New Hampshire, 312 U.S. 569, 577 (1941).

[34]The Redwood City temporary sign regulations permit political signs in residential areas, if the signs are placed inside a house three feet back from a window. The district court apparently concluded that allowing signs only if they are inside a house and three feet back from windows is equivalent to not allowing signs at all. We agree.

[35]In Schneider v. State, 308 U.S. 147 (1939), the Supreme Court flatly stated that "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Id.* at 163. This statement was quoted with approval in Grayned v. City of Rockford, 408 U.S. 104, 118-19 n.40 (1972).

such a regulation, like any other governmental interference with free speech, may be sustained only if it is no more restrictive than necessary to further significant government interests.

The city officials argue that the exclusion of political signs from residential areas does not have a substantially adverse inpact on candidates because residents are exposed to such signs as they pass through commercial areas of the city. This ignores the right of residents to express their own views. Of the two plaintiffs, apparently only Cannon owned commercial property in Redwood City. Baldwin desired to erect a poster in support of the Kerwin candidacy in his own front yard. He was prevented from doing so by the challenged ordinance.[36]

City officials advance two municipal interests in support of the ban. They argue that "indiscriminate use of political signs in such suburban residential areas is entirely out of place with the zoning and planning character of the community." They add that "such signs become much greater traffic hazards in such areas by virtue of narrower street systems, street trees, and sight distances at intersections." But Redwood City has not attempted to regulate "indiscriminate use" of political signs in residential areas or signs which create traffic hazards. Instead, the city has completely barred use of such signs in such areas. As we have noted in considering the 64 square foot

[36]For this reason city officials were not harmed by the failure of the court to receive additional evidence bearing on the adequacy of the exposure resulting from signs erected in commercial areas.

aggregate area limitation, less restrictive means are available to deal with litter, ugliness, and traffic hazards. For these reasons, the only state supreme court that has considered the problem has concluded that total exclusion of political posters from residential areas is invalid.[37] We agree.[38]

Baldwin and Cannon challenge the last paragraph of section 3.89 of the Redwood City Code on the ground that it violates due process by permitting summary seizure where there is no imminent danger to persons or property.[39] The city officials answer that the summary seizure provision is used only against

[37]Pace v. Village of Walton Hills, 15 Ohio St.2d 51, 238 N.E. 2d 543 (1968); *see* Farrell v. Township of Teaneck, 126 N.J. Super. 460, 315 A.2d 424 (1974). *See also* Ross v. Goshi, 351 F. Supp. 949 (D. Hawaii 1972); Peltz v. City of South Euclid, 11 Ohio St.2d 128, 228 N.E.2d 320 (1967). Two lower court decisions in New York are to the contrary. Gibbons v. O'Reilly, 44 Misc.2d 353, 253 N.Y.S.2d 731, (Sup. Ct. 1964); Town of Huntington v. Estate of Schwartz, 63 Misc.2d 836, 313 N.Y.S.2d 918 (Dist. Ct. 1970). Both cases are criticized in Note, Architecture, Aesthetic Zoning, and the First Amendment, 28 Stan. L. Rev. 179, 195 nn. 81-82 (1975).

[38]The Supreme Court's recent decision in Young v. American Mini Theatres, Inc., 96 S.Ct. 2440 (1976), is not to the contrary. The plurality goes no farther than to assert that *"commercial* exploitation of material protected by the First Amendment is subject to zoning or other licensing requirements." *Id.* at 2448 (emphasis added). Mr. Justice Powell, concurring, applies the balancing test announced in United States v. O'Brien, 391 U.S. 367 (1968), including the requirement that "the incidental restriction on . . . First Amendment freedoms is no greater than is essential to the furtherance" of "an important or substantial governmental interest." Young v. American Mini Theatres, Inc., *supra*, 96 S.Ct. at 2456. Our holding that the exclusion of political posters from residential areas is invalid rests upon application of this same test.

[39]*See* note 2.

signs that are "essentially abandoned." But the provision on its face allows city officials to remove signs summarily if in their opinion there is a violation of the sign regulations. There is no evidence that summary removal is in fact employed only when signs are abandoned or hazardous. On the contrary, evidence was offered that signs supporting the Kerwin candidacy were seized during the campaign because they violated the ordinance. Such seizures appear to be contemplated by section 3.89. The final sentence of section 3.89's first paragraph permits summary removal of "any sign which is an immediate peril to persons or property . . . ." Thus, unless the final sentence of the section's second paragraph, challenged here, is superfluous, it must have been intended to allow summary removal in situations where there is no immediate threat of harm.

The summary seizure of a political sign for even a few days can deprive the sign's owner of an important First Amendment liberty interest. During a campaign, time is especially valuable. In the area of regulation of obscenity and censorship of movies, the Supreme Court has held that the Due Process guarantee prevents the erosion of First Amendment liberties by procedures which sweep broadly and with too little discrimination.[40] The Court recently stated

[40]*See, e.g.*, Freedman v. Maryland, 380 U.S. 51, 58-59 (1965); Marcus v. Search Warrant, 367 U.S. 717, 731-32 (1961). *See generally* Board of Regents v. Roth, 408 U.S. 564, 575 n.14 (1972).

that its "[i]nsistence on rigorous procedural safeguards" for an administrative board assigned to screen stage productions is " 'but a special instance of the larger principle that the freedoms of expression must be ringed about with adequate bulwarks.' " *Southeastern Promotions, Ltd. v. Conrad,* 420 U.S. 546, 561 (1975), *quoting Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 66 (1963). The protection of political speech on signs and posters certainly is no less important than the protection of the cinema from the censor.[41] The unlimited power of removal conferred on city officials by the last sentence of section 3.89 is unconstitutional because it does not attempt to accommodate the city's interest in removing improperly placed signs with First Amendment rights.[42]

To be sure, the precise nature of adequate safeguards against suppression of protected speech in motion picture licensing or censoring will differ from the safeguards appropriate for the removal of politi-

[41] *Cf.* United States v. Schiavo, 504 F.2d 1, 13-14 (3d Cir. 1974) (in banc) (Adams, J., concurring); Slate v. McFetridge, 484 F.2d 1169, 1176 (7th Cir. 1973).

[42] Redwood City's provision for summary removal of signs would also be unconstitutional if judged under the Supreme Court's decisions on summary seizure of property. Of course, the property interest of the owners of most political signs is not very significant. Nevertheless, those decisions seem relevant because it is reasonable to assume that free speech interests deserve at least as much protection as property interests. *Cf.* States Marine Lines, Inc. v. Shultz, 498 F.2d 1146, 1154 (4th Cir. 1974). The last sentence of § 3.89 would be invalid under the summary seizure of property cases because it permits summary seizure in other than "extraordinary situations," Fuentes v. Shevin, 407 U.S. 67, 90-92 (1972), and with no "accommodation of the conflicting interests of the parties," Mitchell v. W. T. Grant Co., 416 U.S. 600, 607 (1974); *see* North Georgia Finishing, Inc. v. Di-Chem, 419 U.S. 601, 606-07 (1975).

cal signs. The question of whether a film is obscene will usually be more difficult and more subjective than the question of whether a sign violates a valid ordinance. Thus, we do not hold that a prior adversary hearing and expedited judicial review are necessary to prevent the improper removal of political signs. If a city official believes that a sign posted on private property is illegal and there is no threat of immediate harm, he should attempt to notify the sign's owner. If the owner of an allegedly illegal sign cannot be found within a reasonable time, the sign may be deemed to be abandoned. In fact, the Redwood City Building official stated in an affidavit that summary removal is necessary only in dealing with abandoned signs because "there is no practicable method of obtaining knowledge as the ownership of said signs, or the party responsible for placing the same on such property." The final sentence of section 3.89, however, grants a much broader power of removal than necessary to deal with abandoned signs. If the owner of an allegedly illegal sign can be located, the interests at stake may be reasonably accommodated if the city official gives notice of his intention to remove the sign with a brief statement of the official's reason for believing the sign is illegal so the owner may make an informal response or correct the problem.

The remainder of section 3.89 is not at issue. Our ruling does not prevent Redwood City from summarily removing signs that remained posted after the post-election deadline for removal. Such signs may properly be treated as abandoned. In any event, after

an election is over, the First Amendment interest in political signs is minimal at most.[43]

We affirm the district court's grant of summary judgment to Baldwin and Cannon, holding the inspection fee, the ban on signs in residential areas, and the limitation of the aggregate area of signs per candidate or ballot issue to be unconstitutional. We reverse the district court's grant of summary judgment to Redwood City officials, holding the refundable deposit requirement and the summary removal provision to be constitutional, and, on remand, the district court is directed to enter summary judgment for Baldwin and Cannon with respect to those two provisions, *see Morgan Guaranty Trust Co. v. Martin,* 466 F.2d 593, 599-600 (7th Cir. 1972); *International Longshoremen's & Warehousemen's Union v. Kuntz,* 334 F.2d 165, 167 (9th Cir. 1964). We reverse the district court's holding that Redwood City's permit requirement is constitutional. We affirm the district court's holding that the limitation on the area of individual signs and the aggregate area of signs per parcel of property are constitutional.

Affirmed in part, reversed in part, and remanded for entry of an injunction consistent with this opinion.

---

[43]On the basis of the record, we conclude that the district court's refusal to tax costs in favor of Baldwin and Cannon because their bill of costs was filed three days late was not an abuse of discretion. *Cf.* Doran v. United States, 475 F.2d 742 (1st Cir. 1973); Dickson Supply Inc. v. Montana-Dakota Utilities Co., 423 F.2d 106, 110 (8th Cir. 1970). We therefore do not reach the city official's contention that the court erred in its initial decision that Baldwin and Cannon were entitled to costs.

Appendix C

In the United States District Court
for the Northern District of California

No. C-74-0610 SAW

Alan L. Baldwin and
and George Q. Cannon, Jr.,
Plaintiffs,

vs.

Redwood City; Paul C. Keckley, as Mayor Redwood City; and Charles Gyselbrecht, as Building Official of Redwood City,
Defendants.

[July 29, 1975]

FINAL JUDGMENT

By partial judgment dated January 16, 1975, and order dated July 8, 1975, the Court previously adjudicated all issues in this action with the exception of, (1) the reasonableness of Section 3.137(a) of the Municipal Code of the City of Redwood City, and (2) the reasonableness of requiring a separate permit application for each temporary political sign sought to be erected (§1.136 of said Code), with re-

spect to which exceptions the Court determined, pursuant to order dated July 8, 1975, that material facts remained in issue. This cause, with respect to the aforesaid remaining issues, came on to be tried before the Court on July 16, 1975. The evidence, both oral and documentary, adduced by the parties having been heard and received, said issues having been duly tried, decision having been duly rendered, and the parties having waived preparation of findings of fact and conclusions of law, it is hereby,

ORDERED, ADJUDGED AND DECREED:

1. That judgment shall be, and the same is hereby, granted for defendants with respect to the above mentioned remaining issues.

2. That Section 3.137(a) of the Municipal Code of the City of Redwood City is reasonable, and does not unlawfully or unconstitutionally deprive plaintiffs of rights guaranteed by the 1st or 14th Amendments to the United States Constitution, nor does said section unlawfully interfere with the exercise of those rights, or otherwise.

3. That the provisions of Section 3.136 of the Municipal Code of the City of Redwood City requiring a separate permit application for each temporary political sign sought to be erected are reasonable, and do not unlawfully or unconstitutionally deprive plaintiffs of rights guaranteed by the 1st or 14th Amendments to the United States Constitution, nor do said provisions unlawfully interfere with the exercise of those rights, or otherwise.

4. Except insofar as superseded by the permanent injunction dated January 16, 1975, the preliminary injunction heretofore entered in this action on March 28, 1974, is hereby dissolved.

5. The partial judgment dated January 16, 1975, the order dated July 8, 1975, and this final judgment, fully adjudicate all the claims, rights and liabilities of all the parties herein.

Dated: July 29, 1975

/s/ Stanley A. Weigel
Stanley A. Weigel, Judge

No. C-74-0610 SAW

PROOF OF SERVICE BY MAIL

I am a resident of the United States and a resident of the County of San Mateo, California. I am over the age of 18 years and not a party to the within action. My business address is City Hall, Redwood City, California.

On July 28, 1975, I served the within

FINAL JUDGMENT

on the attorneys for plaintiffs in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Redwood City, California, addressed as follows:

Graham & James
Attorneys at Law
One Maritime Plaza
San Francisco, California 94111
Attn: Wayne S. Canterbury, Esq.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on July 28, 1975, at Redwood City, California.

/s/ Winnie Galatolo
(Signature)

Appendix D

In the United States District Court
for the Northern District of California

No. C-74-0610 SAW

Alan L. Baldwin and
George Q. Cannon, Jr.,
Plaintiffs,

vs.

Redwood City, et al.,
Defendants.

[July 8, 1975]

ORDER

Plaintiffs and defendants have previously moved for summary judgment on all issues in this case, and by Findings of Fact and Conclusions of Law, Permanent Injunction, and Partial Judgment, all dated January 16, 1975, the Court disposed of those motions. Plaintiffs have now moved again for summary judgment on the remaining issues, and defendants have cross-moved for summary judgment. The matter having come on for hearing on July 3, 1975, all parties having been heard, and the Court having considered,

IT IS HEREBY ORDERED that the motion of plaintiffs is entirely denied.

IT IS FURTHER ORDERED that, insofar as it pertains to §§3.80 through 3.84 and 3.89 of the Municipal Code of the City of Redwood City, the motion of defendants is granted.

IT IS FURTHER ORDERED that, insofar as it pertains to the provision for a refundable deposit of $5.00 per sign contained in §3.136 of the Code above described, the motion of defendants is granted.

IT IS FURTHER ORDERED that the motion of defendants is otherwise denied. The Court has determined that the following material facts remain in issue: The reasonableness of §3.137(a) of the Code, and the reasonableness of requiring a separate permit application for each temporary political sign sought to be erected (§3.136 of the Code).

Dated: July 8, 1975.

/s/ Stanley A. Weigel
Judge

Appendix E

In the United States District Court
for the Northern District of California

No. C-74-0610 SAW

Alan L. Baldwin and George Q. Cannon, Jr.,	Plaintiffs,
vs.	
Redwood City, et al.,	Defendants.

ORDER NUNC PRO TUNC RE "JUDGMENT"

To eliminate any possible ambiguity,

IT IS HEREBY ORDERED that the Judgment entered in this case on January 17, 1975 is amended, *nunc pro tunc,* as follows:

1. The title of the document is amended to read "PARTIAL JUDGMENT."

2. Page one, line 24 of the document is amended by adding after the words "Paragraph 2" the words "and is DENIED in all other respects."

Dated: February 14, 1975.

/s/ Stanley A. Weigel
Judge

Appendix F

In the United States District Court
for the Northern District of California

No. C-74-0610 SAW

Alan L. Baldwin and
George Q. Cannon, Jr.,
Plaintiffs,

vs.

Redwood City, et al.,
Defendants.

[Jan. 16, 1975]

PERMANENT INJUNCTION

This matter having come on regularly for hearing November 21, 1974, on the parties' respective motions for summary judgment and on plaintiffs' motion for permanent injunction, and the Court being advised in the premises,

IT IS HEREBY ORDERED that defendants, their agents, representatives and employees, and all persons acting in concert with them, should be and hereby are permanently enjoined from applying or enforcing, directly or indirectly, the following sections of the City of Redwood City Municipal Code, insofar

as said sections purport to regulate political campaign signs and posters:

(a) The second sentence of Section 3.136 of the Redwood City Code, insofar as it relates to the requirement for a non-refundable inspection fee of one dollar for each sign;

(b) Section 3.137(b);

(c) Section 3.139.

Dated: Jan. 16, 1975

/s/ Stanley A. Weigel
United States District Judge

Appendix G

In the United States District Court
for the Northern District of California

No. C-74-0610 SAW

Alan L. Baldwin and
George Q. Cannon, Jr.,
Plaintiffs,

vs.

Redwood City, et al.,
Defendants.

[Jan. 16, 1975]

JUDGMENT

Cross-motions for summary judgment having been duly brought on to be heard and the Court having made orders thereto and directing that judgment be entered herein, and the Court having filed its findings of fact and conclusions of law, it is hereby

ORDERED, ADJUDGED AND DECREED

(1) That plaintiffs' motion for summary judgment is GRANTED in the respects set forth in Paragraph 2.

(2) That defendants, their agents, representatives and employees and all persons acting in concert with

them, are permanently enjoined from applying or enforcing, directly or indirectly, the following sections of the City of Redwood City, Municipal Code, insofar as said sections purport to regulate political campaign signs and posters:

(a) The second sentence of Section 3.186 of the Redwood City Code, insofar as it relates to the requirement for a non-refundable inspection fee of one dollar for each sign;

(b) Section 3.137(b);

(c) Section 3.139.

(3) Defendant City of REDWOOD CITY is not a "person" within the meaning of Title 42 U.S.C. §1983; accordingly, the claim against said defendant is DISMISSED.

(4) Defendants' motion for summary judgment on grounds of mootness is DENIED.

(5) Defendant KECKLEY'S motion for summary judgment is DENIED.

Dated: Jan. 16, 1975

/s/ Stanley A. Weigel
United States District Judge

Appendix H

United States Court of Appeals
for the Ninth Circuit

No. 74-1556

Alan L. Baldwin and
and George Q. Cannon, Jr.,
Plaintiffs-Appellees,

vs.

Redwood City, Paul C. Keckley, Mayor, and Charles Gyselbrecht, Building Official,
Defendants-Appellants.

[Sep. 11, 1975]

ORDER

Appeal from the United States District Court
for the Northern District of California

Before: BROWNING and CHOY, Circuit Judges
and SKOPIL,* District Judge

On stipulation of counsel that the appeal is moot, it is ordered that the appeal be and it hereby is dismissed.

*Honorable Otto R. Skopil, Jr., United States District Judge, District of Oregon, sitting by designation.

Appendix I

In the United States District Court
for the Northern District of California

No. C-74-0610 SAW

Alan L. Baldwin and
George Q. Cannon, Jr.,
Plaintiffs,

vs.

Redwood City, et al.,
Defendants.

[Mar. 28, 1974]

PRELIMINARY INJUNCTION

This matter came on regularly for hearing March 28, 1974 on plaintiffs' motion for preliminary injunction. Wayne Canterbury of Davis, Cowell and Bowe appeared for plaintiffs and Clark G. Maloney, Assistant City Attorney for Redwood City, appeared for defendants. All Counsel having waived in open court, findings of fact and conclusions of law, the Court having read the motion and First Amended Complaint and the parties' respective memoranda and affidavits, and good cause appearing, it is

ORDERED that defendants, their agents, representatives and employees, and all persons acting in concert with them, are preliminarily enjoined from applying or enforcing Sections 3.136, 3.137, 3.139, 3.80 through 3.84(f) and the last sentence of 3.89 of the Redwood City Code insofar as said sections relate to political campaign signs.

Dated: 3/28/74

/s/ Stanley A. Weigel
United States District Judge

Approved as to form.
Clark G. Maloney

Appendix J

In the United States District Court
for the Northern District of California

No. C-74-0610 SAW

Alan L. Baldwin and
George Q. Cannon, Jr., Plaintiffs,

vs.

Redwood City, et al., Defendants.

[Mar. 20, 1974]

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

This cause came on to be heard on plaintiffs' verified complaint, the affidavits submitted therewith and the certificate of Wayne S. Canterbury, attorney for plaintiffs, and it appearing to the court that defendants are committing acts as set forth in plaintiffs' complaint, and will continue to do so unless restrained by Order of this Court, and that immediate and irreparable injury, loss or damage will result to plaintiffs if this order does not issue, and that defendants were given notice and an opportunity to be heard in opposition to the granting of a Temporary Restraining Order, it is

ORDERED, that defendants, their agents, representatives and employees, and all persons acting in concert with them, are temporarily restrained until the further order of the Court in this matter on March 28, 1974 from applying or enforcing Sections 3.121, 3.137, 3.139 and 3.89 of the Redwood City Code insofar as they relate to political campaign signs.

ORDERED, that plaintiffs' motion for a preliminary injunction be set down for hearing on the 28th day of March, 1974, at 2:15 p.m., in Courtroom No. 8, 450 Golden Gate Avenue, San Francisco, California; and it is further

ORDERED, that defendants shall file all papers in opposition to plaintiffs' motion for preliminary injunction not later than 11:00 a.m., March 26, 1974.

ORDERED, that copies of this Order and of plaintiffs' complaint and affidavits submitted therewith, together with proper summons issued by the Clerk of this Court, be immediately served by the United States Marshal upon the defendants.

Dated: March 20, 1974.

/s/ Stanley A. Weigel
United States District Judge

Appendix K

REDWOOD CITY CODE

Chapter 3

Article II

Division 6. Temporary Signs

Sec. 3.133. Erection regulated.

Temporary signs may be erected in addition to all other signs permitted by this article without complying with the provisions of subdivision II of division 3 of this article if they comply with the provisions of this division. (Ord. No. 1983, art. 8, § 8.1)

Sec. 3.134. Uses.

Temporary signs shall be used solely for the purpose of advertising an event occurring on a specific date, such as elections, theatrical and circus performances and special sales by retail stores. (Ord. No. 1083, art. 8, § 8.2)

Sec. 3.135. Maximum length of time to be maintained.

Temporary signs shall not be maintained for a period in excess of sixty days, and in no event shall such signs be maintained more than ten days after the happening of the event advertised thereon. (Ord. No. 1083, art. 8, § 8.3)

Sec. 3.136. Permit required to erect; application; inspection fee; cash deposit or bond.

No person shall erect or maintain any temporary sign until a permit therefor has been secured from the building inspector. Applications for a temporary sign permit shall be made on forms provided by the building inspector and shall be accompanied by a nonrefundable inspection fee of one dollar for each sign.

Every application for a temporary sign shall be accompanied by a cash deposit of five dollars for each temporary sign proposed to be erected to assure removal of such signs in accordance with the provisions of section 3.135. On the failure to remove the signs as required by section 3.135, the deposit shall be forfeited to the city; otherwise, the building inspector shall cause the deposit to be refunded. In lieu of a cash deposit, the building inspector may accept a bond executed by a corporate surety authorized to do business in the state and conditioned upon removal of the temporary signs in compliance with the provisions of section 3.185. (Ord. No. 1083, art. 8, § 8.4)

Sec. 3.137. Maximum area.

(a) No temporary sign shall exceed sixteen square feet in area. The aggregate area of all temporary signs placed or maintained on any parcel of real property in one ownership shall not exceed eighty square feet.

(b) The aggregate area of all temporary signs placed or maintained within the city advertising a single event or, in the event of an election, for any

candidate or ballot issue, shall not exceed sixty-four square feet. (Ord. No. 1083, art. 8, § 8.5; Ord. No. 1304, § 18)

Sec. 3.138. Placement on public property.

No temporary sign shall be permitted on or to extend over any public property; provided, however, that the building inspector may issue a permit for the erection or maintenance of banners, flags, bunting and similar devices over any public right of way if he finds that such device is to be maintained in connection with an event of a general civil and public nature conducted within the city. The building inspector may establish conditions on such permit as may be necessary to assure compliance with the purposes of this article. (Ord. No. 1083, art. 8, § 8.6)

Sec. 3.139. Prohibited in residentially zoned districts.

No temporary sign shall be placed or maintained in the zoning districts mentioned in section 3.121. (Ord. No. 1083, art. 8, § 8.7)

Sec. 3.89

All signs, including signs installed prior to the adoption of this article, shall be constantly maintained in a state of security, safety and good repair. If the building inspector finds that any sign is unsafe or insecure, is a menace to the public safety or has been constructed, erected, relocated or altered after the effective date of this article in violation of the provisions hereof, he shall give written notice to the owner

or the tenant of the property wherein it is located to remove or alter such sign. If the owner or tenant fails to comply with the provisions of this article within ten days after such notice, the building inspector may cause such sign to be removed, and the cost thereof shall be paid by the owner or tenant. The building inspector may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice.

Notwithstanding the foregoing, the building inspector may remove any sign erected, placed or maintained in violation of this article if the owner of the property on which the sign is erected fails to remove such sign after 24 hours written notice to do so. In addition, the building inspector may summarily, without notice, remove any temporary sign which is erected, placed or maintained in violation of this article in any zoning district.

Supreme Court, U. S.
FILED
NOV 8 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

October Term, 1976

No. 76-507

Marguerite Leipzig, Mayor of The City of Redwood City, California, and Charles Gyselbrecht, Building Official of The City of Redwood City, California,
Petitioners,

vs.

Alan L. Baldwin and George Q. Cannon, Jr.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

Wayne S. Canterbury
Graham & James
One Maritime Plaza, Suite 300
San Francisco, California 94111
Telephone: (415) 986-2171
Attorney for Respondents.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

	Page
Question Presented	2
Statement of the Case	2
a. Provisions of the Code challenged by plaintiffs	2
b. Provisions of the Code not challenged by plaintiffs	6
Reasons the Writ Should Be Denied	6
Conclusion	12

Table of Authorities Cited

Cases	Pages
Buckley v. Valeo, 96 S.Ct. 612 (1976)	7
Cox v. New Hampshire, 312 U.S. 569 (1941)	10
Freedman v. Maryland, 380 U.S. 51 (1965)	10
Grayned v. City of Rockford, 408 U.S. 104 (1972)	7
Hynes v. Mayor of Oradell, 48 L.Ed.2d 243 (1976)	7, 8, 9
Kovacs v. Cooper, 336 U.S. 77 (1949)	8
Monitor Patriot Co. v. Roy, 401 U.S. 265 (1971)	7, 8
Lehman v. City of Shaker Heights, 418 U.S. 298 (1974)	8
Pace v. Village of Walton Hills, 15 Ohio St.2d 51, 238 N.E. 2d 543 (1968)	8, 10
Pell v. Procunier, 417 U.S. 817 (1974)	9
Police Department v. Mosley, 408 U.S. 92 (1972)	10

	Pages
Quaker Action Group v. Morton, 516 F.2d 717 (D.C. Cir. 1975)	11
Red Lion Broadcasting Co. v. FCC, 375 U.S. 367 (1969)	10
Ross v. Goshi, 351 F.Supp. 949 (D. Ha. 1971)	8, 10, 11
Schneider v. State, 308 U.S. 147 (1939)	8, 9, 10
Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)	11
Village of Belle Terre v. Borass, 415 U.S. 987 (1974)	8
Young v. American Mini Theatres, Inc., 96 S.Ct. 2400 (1976)	9

Codes

Redwood City Code:	
Section 3.133	4
Section 3.135	6
Section 3.136	2
Section 3.137(a)	5
Section 3.137(b)	5
Section 3.139	5
Section 3.86	6
Section 3.87	6
Section 3.89	5, 6

Constitutions

United States Constitution:	
First Amendment	2, 7, 8, 9, 11
Fourteenth Amendment	2

Rules

Supreme Court Rules, Rule 19(b)	6

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-507

MARGUERITE LEIPZIG, MAYOR OF THE CITY OF REDWOOD CITY, CALIFORNIA, and CHARLES GYSELBRECHT, BUILDING OFFICIAL OF THE CITY OF REDWOOD CITY, CALIFORNIA,
Petitioners,

vs.

ALAN L. BALDWIN and GEORGE Q. CANNON, JR.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

Alan L. Baldwin and George Q. Cannon, Jr., respond to the Petition for a Writ of Certiorari filed herein and request that the Court decline to review the judgment of the United States Court of Appeals for the Ninth Circuit entered August 9, 1976.

QUESTION PRESENTED

Whether enforcement of certain provisions of the Redwood City Code which impose burdensome and unnecessary restrictions on the use of temporary political signs during public elections violates the First and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

Plaintiffs, residents of and owners of property in Redwood City, California, filed this action in March 1974, seeking summary and permanent injunctive relief against the enforcement of certain provisions of the Redwood City Code relating to the size, number and placement of political signs within the city, and a declaration that said provisions are violative of the First and Fourteenth Amendments to the United States. The procedural background of the case and the substance of the rulings below are set forth at pages 4 and 5 of the Petition.

a. Provisions of the Code Challenged by Plaintiffs

The provisions challenged in the complaint are as follows:

Section 3.136 requires that for *each* temporary sign or poster sought to be erected the applicant must pay a non-refundable "inspection fee" of $1.00, tender a $5.00 cash deposit or corporate surety bond which is subject to forfeiture in the event the sign is removed for violation of any of the provisions of the code, and secure a permit for the sign by executing an application form provided by the city.

The application on its face requires the applicant to provide the following information: The name, address and telephone number of the owner of the sign; the name, address and telephone number of the sign erector; the address, lot, block and subdivision of the sign location; a description of the type of sign to be erected (e.g., free standing, roof, wall, combination, animated, flashing, moving or rotating); the valuation of the sign; a certificate that the applicant will not erect the sign in violation of the Workman's Compensation Laws of California; a certificate that the applicant has the *written* permission of the owner or tenant on whose property the sign is to be erected; a statement describing the fire zone, lot frontage, area of existing signs on the lot, the area of the proposed sign, the size of the sign, the distance between the bottom of the sign and the ground, the maximum projection of the sign beyond the face of the building or street property line, and the distance between the top of the sign and any overhead electrical wires. The permit application also requires that it be accompanied by a plot plan showing the position of the sign and its relation to structures and other signs on the property; plans and specifications for the sign and the method of attachment or anchorage; stress sheets and calculations prepared by a licensed civil or structural engineer; such other information to show full compliance with all applicable laws "when required," and proof of a permit from the Division of Highways with regard to any signs projecting over the State right-of-way. The permit application also instructs the applicant that the building department must be notified for inspection 24 hours prior to the erection of the sign.

This application form is used for all signs, ranging from cardboard posters to permanent freeway billboards. Other provisions of the Redwood City Code actually exempt the applicant for a temporary sign advertising such events as "elections . . . and circus performances . . ." (Redwood City Code, Section 3.133) from furnishing much of the information requested in the application form. The application itself, however, does not instruct which portions must be completed and on the contrary expressly warns that "Only Complete Application Accepted." See Appendix B, page 23. Defendant Gyselbrecht, the city building inspector responsible for enforcement of the sign ordinance, testified he generally assists persons who fill out the application in his office, but admitted that some applicants are required to provide greater information than others (no explanation for the favorable treatment was given) and that persons who secure the permit application by mail are not informed that the "Only Complete Application Accepted" instruction does not mean what it says.

Uncontradicted evidence before the trial court showed that the permit procedure was so difficult, complicated, expensive and restrictive as to virtually prohibit the use of political signs by supporters of candidates running for local office. Appendix B, p. 12, n. 14. The irony of the matter is that as convoluted as the permit system is, it lacks the essential element necessary to achieve the purported goal. Of the vast data collected, *none* of it connects a particular sign with its owner, as the application form does not require the applicant to describe or provide a facsimile of the sign he wishes to post. There is no pro-

vision that the sign itself must bear identification of its owner.

Section 3.137(b) provides that the aggregate area of all temporary signs placed or maintained within the City advocating a particular candidate or ballot issue shall not exceed 64 square feet. Subpart (a) of that section allows signs up to 16 square feet; thus only *four* such signs are allowed for any one candidate or issue *throughout the entire city,* which is populated by 55,000 people and extends over an area exceeding 20 square miles. Appendix B, p. 19.

Section 3.139 bans, absolutely, any political sign of any type, size or quality in residentially zoned districts.

Section 3.89 provides, *inter alia,* that ". . . the building inspector many summarily, without notice, remove any temporary sign which is erected, placed or maintained in violation of this article in any zoning district."

Under these regulations, an individual wishing to erect a single 50¢ poster is required to pay a $1.00 fee, post a $5.00 bond and provide the above-detailed information to obtain a permit. He would not be permitted to post the sign on his own front yard. On a larger scale, a campaign committee wishing to erect 100 identical 4′ x 4′ political posters (assuming it were not bound by the four-sign-per-candidate requirement) would have to pay a $100.00 non-refundable "inspection fee," post $500.00 in the form of a cash deposit or a surety bond and fill out 100 separate permit applications.

b. Provisions of the Code Not Challenged by Plaintiffs

It is perhaps as important to set forth what is not at issue in this cause as to state what is. The following provisions of the Code are not challenged:

Section 3.135 prescribes that temporary political signs are not to be maintained for a period in excess of 45 days and must be dismantled within 10 days after the election.

Section 3.86, provides that "no sign . . . shall be . . . erected so as to obstruct or prevent free ingress or egress from any window, door or fire escape."

Section 3.87 states that "no sign shall be erected so as to obstruct the vision of vehicular traffic or at any location where it may interfere with, or be confused with, any traffic signal or device."

Section 3.89, provides that "the building inspector may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice."

REASONS THE WRIT SHOULD BE DENIED

The decision of the Ninth Circuit does not conflict with the decision of another court of appeals on the same or similar matter; it involves no important state or territorial question; it does not present any other ground for review by way of certiorari as set forth in Rule 19(b) of the Rules of the Supreme Court. While the issues of law involved in this case are important, they are not novel. The ruling itself merely resolves the dispute between the concerned parties over specific and peculiar code provisions which could be amended at the next town

meeting. There is nothing on record to show a pattern of similar laws in other cities. No other California municipality regarded this case with sufficient interest to file an amicus curiae brief in the proceedings below. The fact that no federal court outside the Ninth Circuit has concerned itself in a reported decision with a similar case suggests that the issues presented are not of wide-spread concern or likely to be raised in future litigation. These circumstances lead to the conclusion that the petition does not present an issue of sufficient scope and national relevance to justify consideration by this Court.

The Ninth Circuit simply corrected a gross misapplication of law by the District Court, which had accepted defendants' argument, resurrected here, that the First Amendment issues raised in the complaint were to be assessed under legal standards suitable to municipal zoning disputes, in which the plaintiff has the burden of showing the regulations constitute an unreasonable use of police powers. Appendix B, p. 10. In outlining the proper judicial test, the court drew carefully from relevant Supreme Court opinions holding that where a statute on its face inhibits free expression it can be maintained only for weighty or compelling reasons (*Grayned v. City of Rockford,* 408 U.S. 104, 115 (1972), Appendix B, pp. 11-12), particularly in the electoral arena (*Monitor Patriot Co. v. Roy,* 401 U.S. 265, 272 (1971) (Appendix B, p. 11)); *Buckley v. Valeo,* 96 S.Ct. 612 (1976) (Appendix B, pp. 11, 13, 16), and must be drafted in the narrowest manner consistent with a legitimate end (*Hynes v. Mayor of Oradell,* 48 L.Ed.2d 243 (1976) (Appendix B, p. 14)). Adjudged by these stricter standards, the constitutional defects of the Code are apparent.

The Court of Appeals' judgment is consistent with applicable Supreme Court decisions. The essential questions raised in the petition were answered almost forty years ago in *Schneider v. State,* 308 U.S. 147 (1939). The dispute there arose from a municipal ordinance prohibiting the distribution of political handbills. The court rejected the city's argument that its interest in keeping its neighborhoods free of rubbish was paramount to defendant's right to free expression, holding that "The public convenience and convenience in respect of cleanliness of the streets does not justify an exertion of the police power which invades the free communication of information and opinion secured by the Constitution." *Schneider v. State,* 308 U.S. at pp. 162-163. See, also, Appendix B, p. 13.

In view of the clear applicability of *Schneider* and related cases (e.g., *Hynes v. Mayor of Oradell,* 48 L.Ed.2d 243 (1976) and cases cited at pp. 250-252; *Monitor Patriot v. Roy,* supra; *Ross v. Goshi,* 351 F.Supp. 949 (D. Ha. 1971); *Pace v. Village of Walton Hills,* 15 Ohio St.2d 51, 238 N.E.2d 543 (1968)), the court rejected the obviously strained analogy to the following cases cited by petitioners. In *Kovacs v. Cooper,* 336 U.S. 77 (1949), the Court held that a city is entitled to divert sound trucks form residential neighborhoods because their loud message is literally inescapable and constitutes an invasion of privacy. Political signs do not have the same offensive qualities. Appendix B, p. 15. *Village of Belle Terre v. Borass,* 415 U.S. 987 (1974) is inapposite for the reason that it involved no First Amendment question. In *Lehman v. City of Shaker Heights,* 418 U.S. 298 (1974), the Court

held that the commercial advertising space in municipal street cars, unlike open space and street corners, was not a First Amendment forum; the Court therefore did not engage in a First Amendment analysis in denying the relief sought by plaintiff. *Pell v. Procunier,* 417 U.S. 817 (1974) held that in light of a then recent attempted jail break the State was justified in limiting access between prisoners and media representatives in its prisons. Unless we are to accept that conditions prevailing in Redwood City resemble those in San Quentin, *Pell v. Procunier* is of little assistance. The Court of Appeals was also correct in dismissing petitioners' argument that *Young v. American Mini Theatres, Inc.,* 96 S.Ct. 2400 (1976) signals the departure from *Schneider v. State,* supra, observing that *Young* ". . . goes no further than to assert that '*commercial* exploitation of material protected by the First Amendment is subject to zoning or other licensing requirements'. Id. at p. 2448 (emphasis added)." Appendix B, p. 28, n. 38.

By ruling these particular code sections unconstitutional the Court of Appeals did nothing to deprive the city of its right to reasonably regulate the use of political signs. The Court expressly recognized that many of the interests advanced by the city in defense of the regulations were legitimate (Appendix B, pp. 12-13), but that the provisions in question were simply " 'unnecessarily restrictive for the purpose they were designed to serve.' [Citations omitted]." Appendix B, p. 14. The Court of Appeals had neither the duty nor the jurisdiction to re-draft Redwood City's ordinance to cure its constitutional maladies. *Hynes v. Mayor of Oradell,* supra, 48 L.Ed.2d at p. 254. Neverthe-

less, the court set forth clearly the guidelines for permissible regulation. A provision limiting the number of signs on a particular residential lot may be constitutionally permissible, the absolute ban of all signs is not. Appendix B, pp. 27-28; *Pace v. Village of Walton Hills,* supra; cf. *Ross v. Goshi,* supra. A single permit issued to a campaign committee for the posting of signs may be acceptable; a complicated, burdensome and ineffective permit system is not. Appendix B, pp. 25-26. A municipality is entitled to collect fees and deposits in special circumstances, but an arbitrarily fixed fee and security requirement for all signs, regardless of size or construction, is unacceptable. Appendix B, p. 2; *Cox v. New Hampshire,* 312 U.S. 569 (1941). The city may summarily remove signs which are abandoned or hazardous, but may not remove signs without notice simply because they are considered a nuisance or are believed to be in violation of a code provision. Appendix B, p. 29; *Freedman v. Maryland,* 380 U.S. 51 (1965); *Police Department v. Mosley,* 408 U.S. 92 (1972).

Defendants picture the suburban dweller as one whose finely developed sense of aesthetics precludes an interest in actively expressing political preferences—or in learning those of his neighbors. Plaintiffs, by bringing this action, belie this unflattering portrait. Their right to post signs for a few weeks during an election, *and their neighbors' right to see them* are secured by the Constitution. *Schneider v. State,* supra; *Red Lion Broadcasting Co. v. FCC,* 375 U.S. 367 (1969).

Petitioners' quarrel with the Court's characterization of political signs as "virtually free speech" results from

their misunderstanding of the concept. "Speech," in this context, is taken to mean the use of universally recognized symbols to convey ideas; it is distinguished from *conduct.* Cf. *Tinker v. Des Moines Independent Community School District,* 393 U.S. 503 (1969). The political poster is pure expression, whether it is held by an individual or posted on his property; it no more loses constitutional protection when it is released from the owner's grasp than does a newspaper when it is placed on a newsstand.[1] *Ross v. Goshi,* supra, 351 F.Supp. 949.

The argument that plaintiffs should forfeit the right to post political signs because alternative means of communication are available requires little comment. The campaign poster is a traditional, effective and economical political medium having unique advantages over others. Appendix B, p. 16. The fact that other means of communication are available is insufficient to deny plaintiffs' right to use this traditional one. *Quaker Action Group v. Morton,* 516 F.2d 717, 733, n. 49(a) (D.C. Cir. 1975).

In summary, the judgment of the Ninth Circuit is well reasoned, fair and in harmony with long standing First Amendment principles. The Petition presents no substantial reason for review of the judgment by the Supreme Court.

---

[1]The Court of Appeals expressly ruled that at the time the sign is actually *abandoned* its First Amendment protection is "minimal at most." Appendix B, p. 32.

CONCLUSION

For the reasons stated above, Respondents pray the Petition for Writ of Certiorari be denied.

Dated, San Francisco, California,
November 4, 1976.

Respectfully submitted,
WAYNE S. CANTERBURY
Attorney for Respondents.

Supreme Court, U.S.
FILED
NOV 20 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-507

MARGUERITE LEIPZIG, MAYOR OF THE CITY OF REDWOOD CITY, CALIFORNIA, and CHARLES GYSELBRECHT, BUILDING OFFICIAL OF THE CITY OF REDWOOD CITY, CALIFORNIA,
Petitioners,

vs.

ALAN L. BALDWIN and GEORGE Q. CANNON, JR.,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

DAVID E. SCHRICKER,
City Attorney,
702 Marshall Street, Suite 510,
Redwood City, California 94063,
Telephone: (415) 369-6251,
Attorney for Petitioners.

PERNAU-WALSH PRINTING CO. - 562 MISSION STREET - SAN FRANCISCO, CA 94105

Subject Index

	Page
Clarification of statement of the case	2
Reasons for granting the writ	4
Conclusion	8

Table of Authorities Cited

Cases	Pages
Cameron v. Johnson (1968), 390 U.S. 611	5
Cox v. New Hampshire (1941), 312 U.S. 569	5
Kovacs v. Cooper (1949), 336 U.S. 77	4, 5
Lehman v. City of Shaker Heights (1974), 419 U.S. 298	5
Rowan v. U.S. Post Office (1970), 397 U.S. 728	5
Schneider v. New Jersey (1939), 308 U.S. 147	5, 6
U.S. v. O'Brien (1968), 391 U.S. 367	6
Village of Belle Terre v. Boraas (1974), 416 U.S. 1	5
Young v. American Mini Theatres (1976), — U.S. —, 96 S. Ct. 2440, 44 U.S.L.W. 4999	4, 5

Codes

Redwood City Code:	
Section 3.135	2, 4
Section 3.136	2

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1976

No. 76-507

MARGUERITE LEIPZIG, MAYOR OF THE CITY OF REDWOOD CITY, CALIFORNIA, and CHARLES GYSELBRECHT, BUILDING OFFICIAL OF THE CITY OF REDWOOD CITY, CALIFORNIA,
Petitioners,

vs.

ALAN L. BALDWIN and GEORGE Q. CANNON, JR.,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

---

Marguerite Leipzig, Mayor of the City of Redwood City, California, and Charles Gyselbrecht, Building Official of the City of Redwood City, California, reply to the brief in opposition to petition for a writ of certiorari filed herein by Respondents above named.

CLARIFICATION OF STATEMENT OF THE CASE

While the record will be before the Court in the event the petition is granted, and contentions of the parties with respect to the facts resolved by reference thereto, brief comment is necessary in view of certain assertions of Plaintiffs regarding the facts. The purpose of the Five Dollar ($5.00) deposit (R.C. Code §3.136) is to assure removal of temporary signs within ten days after the event advertised in accordance with Redwood City Code Section 3.135. The deposit is not subject to forfeiture, as Plaintiffs assert, for *any* violation of the provisions of the Code (Brief in Opposition, etc., p. 2). The sole and express purpose of the refundable deposit is to encourage the permittee to remove the sign.

The application form by which Plaintiffs profess to be so perplexed is, in an effort to reduce bureaucratic red tape, the same form required of all sign permittees. Plaintiffs assert that some applicants are required to provide greater information than others in filling out the application form (Brief in Opposition, etc., p. 4). However, the testimony of the Building Inspector on which Plaintiffs rely is to the effect that one particular item on the form not required to be filled out is, on occasion, voluntarily supplied by the applicant. The Inspector further testified that, for all practical purposes, the relevant information unknown to an applicant is filled out by the City staff. The Trial Court perceived the practical, as opposed to contrived, circumstances involved in obtaining a permit, compared the situation to the

average person inquiring for information from a tax assessor or some other city official, and recognized that the official will readily advise what information is, or is not, necessary for the temporary sign permit. Similarly, the Building Inspector testified that, as to any request for a sign permit made by mail, the applicant is advised by return mail transmitting the application that if the applicant has problems in filling out the form, the City will furnish assistance.

Both the Court of Appeals and Plaintiffs assert that "uncontradicted evidence" shows that the permit procedure was so difficult that it unduly burdened the use of political signs, relying upon conclusionary affidavits filed by Plaintiffs. In point of fact, the issue of the reasonableness of the permit system was tried before the Court, wherein Plaintiffs' only witness testified that he had never filled out the application form. The reasonableness of the system was established to the Court's satisfaction by testimony of Defendants' witnesses, the only and persuasive evidence on point. Moreover, in prior proceedings before the Trial Court, affidavits filed on behalf of Defendants did contradict the aforementioned affidavits of Plaintiffs.

As to Plaintiffs' assertion that the application form does not require a facsimile of the sign (Brief in Opposition, etc., p. 4), the Building Official, at trial, testified that such was unnecessary in that the location and dimensions of the sign provided adequate information. The Court, as trier of fact, and best

able to resolve such issues, found no difficulty in holding for Defendants on the point.

Plaintiffs, inexplicably, cite certain Redwood City Code sections which are not challenged.[1] For the most part, the non-challenged sections relate to remedies of the City with respect to signs which constitute immediate or imminent hazards. As with regulations pertaining to fire prevention, public health, and other areas of public welfare, the exercise of legislative authority is not so constrained as to prevent only immediate perils, but also may achieve goals less dramatic but nonetheless weighty (cf., *Young v. American Mini Theatres* [1976], ... U.S. ....., 96 S. Ct. 2440, 44 U.S.L.W. 4999; *Kovacs v. Cooper* [1949], 336 U.S. 77).

REASONS FOR GRANTING THE WRIT

It is difficult to understand Plaintiffs conclusion that the issues of law presented herein are not novel, while at the same time recognizing their importance (Brief in Opposition, etc., p. 6). The issues are both important and novel in that the permissible degree of regulation of the mode of expression involved herein as to time, place, and manner has not been before this Court. Use of political signs is commonplace. Absence of an amicus curiae brief in the Courts below reflects absence of knowledge of the case, not lack of interest in the subject matter.

[1]In doing so, Plaintiffs erroneously state the time period during which temporary signs may be maintained is 45 days. The correct period is 60 days (R.C. Code §3.135).

In true perspective, the case presents issues which are of increasing importance because of the urbanization of our country. What may have been an innocuous device in earlier days and in smaller communities has become less so as the ability to obtain relief from the pressures of urban living decreases. In short, the issues herein require resolution for the guidance of communities as the conduct of candidates and their supporters using political signs collides with municipal goals in furtherance of neighborhood preservation (*Young v. American Mini Theatres, Inc.,* supra; *Village of Belle Terre v. Boraas* [1974], 416 U.S. 1), tranquility (*Kovacs v. Cooper,* supra), privacy (*Rowan v. U.S. Post Office* [1970], 397 U.S. 728; *Lehman v. City of Shaker Heights* [1974], 419 U.S. 298), safety (*Cameron v. Johnson* [1968], 390 U.S. 611; *Cox v. New Hampshire* [1941], 312 U.S. 569), and other legitimate municipal goals.

The failure of the Court of Appeals in the case herein to focus upon the mode of communication has resulted in a rule not supported by authority. In relying upon *Schneider v. New Jersey* [1939], 308 U.S. 147, both the Court below and Plaintiffs ignore the factual distinctions between that case and the case herein. The *Schneider* rationale is not helpful because it does not involve either the type of regulation nor the mode of expression at issue herein. Three of the regulations invalidated in *Schneider* entirely prohibited the dissemination of expression by leaflets, and the remaining regulation allowed such dissemination under permit issued without ade-

quate standards. Here, total prohibition is not at issue, and issuance of the sign permits is ministerial upon compliance with specific, definite conditions and standards. The mode of expression in *Schneider,* leaflets, presented an entirely different type of problem for the municipality. There, the problem related to disturbance of residents by physical intrusion upon the domicile, and littering created by carelessness. Here, the intrusions in residental areas are visual but nonetheless abrasive and pervasive, and the littering problem is not created so much by carelessness as by the very nature of the mode of expression. The signs subject to Redwood City's regulations are those which, by definition, are left unattended and almost certainly destined to become litter.

The focus by both Plaintiffs and the Court of Appeals upon the content of the expression clouds the true subject of regulation. It is the conduct relating to the particular mode of communication which is regulated, not the content. Incidental limitations upon expression resulting from regulation of conduct are constitutionally permissible *(U.S. v. O'Brien* [1968], 391 U.S. 367, 391). The particular mode of communication — temporary signs — when combined with the conduct inherently related thereto creates the municipal problems sought to be relieved by the regulations. Candidates and their supporters compete with each other to erect as many political signs of as great a size, and in as many places, as possible. However erroneous the assumption may be, they apparently believe that quantity of signs indicates degree

of political support. Accordingly, absent regulation of the type herein contested a city and its residents are simply overwhelmed by the medium, if not the message.

In arguing that the Court of Appeals did nothing to deprive the City of its right reasonably to regulate the use of political signs (Brief in Opposition, etc., p. 9), Plaintiffs beg the question. In point of fact, the Court of Appeals did deprive the City of its right reasonably to regulate signs under the particular regulations at issue. Further, both the Plaintiffs' and the Court of Appeals' purported solutions create more problems than not. For example, Plaintiffs would provide for a single permit to be issued to a campaign committee. However, that "solution" makes no provision for an individual's status in erecting signs. Similarly, the Court of Appeals suggests ". . . it is not beyond the power of the City to impose design restrictions that would bar more unsightly posters . . ." (Petition, Appendix B, p. 22). That suggests that the City may regulate in such manner as to affect the contents of such signs, an area now unregulated by the City's ordinance, and heretofore thought not properly subject to regulation.

CONCLUSION

If, as Plaintiffs assert, political signs are a "traditional" medium of expression, the City's regulations are a legislative reflection of society's changes which preserve access to the tradition. The time is ripe for a definition of the degree of regulation which will strike a fair balance between expression and the legitimate municipal goals sought to be achieved by the regulations contested herein.

WHEREFORE, it is respectfully submitted that the petition herein should be granted.

Dated, Redwood City, California,
November 16, 1976.

Respectfully submitted,

DAVID E. SCHRICKER,
City Attorney,
Attorney for Petitioners.